

United States District Court
for the District of Utah

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAY - 5 2010

D. MARK JONES, CLERK

DEPUTY CLERK

**Request and Order for Modifying Conditions of Supervision
With Consent of the Offender**

(Waiver of hearing attached)

Name of Offender: **Greydon Anthony Smith**

Docket Number: **1:05-CR-00009-001-DAK**

Name of Sentencing Judicial Officer: **Honorable Dale A. Kimball
Senior U.S. District Judge**

Date of Original Sentence: **December 1, 2005**

Original Offense: **Coercion or Enticement of a Minor**

Original Sentence: **60 months Bureau of Prisons custody/120 months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **April 30, 2010**

PETITIONING THE COURT

☒ To modify the conditions of supervision as follows:

1. The defendant shall participate in the United States Probation and Pretrial Services Office Computer and Internet Monitoring Program under a copayment plan, and will comply with the provisions outlined in:

Appendix A, Limited Internet Access
(Computer and internet use, as approved)

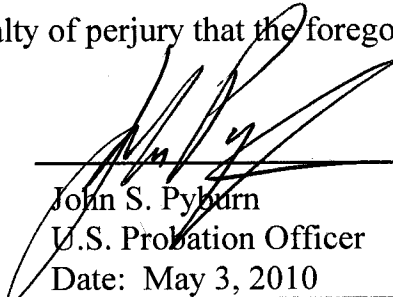
Furthermore; all computers, internet accessible devices, media storage devices, and digital media accessible to the defendant are subject to manual inspection/search, configuration, and the installation of monitoring software and/or hardware.

2. The defendant shall not view, access, or possess sexually explicit or pornographic materials in any format.

CAUSE

The defendant agrees by consent to the amending of his computer/internet condition to the current conditions utilized by the U.S. Probation Office.

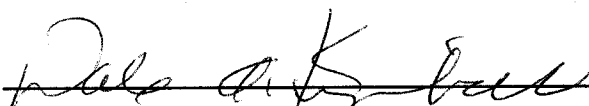
I declare under penalty of perjury that the foregoing is true and correct



John S. Pyburn
U.S. Probation Officer
Date: May 3, 2010

THE COURT ORDERS:

- ☒ The modification of conditions as noted above
☐ No action
☐ Other



Honorable Dale A. Kimball
Senior U.S. District Judge

Date: May 5, 2010

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
PROBATION AND PRETRIAL SERVICES OFFICE**

**WAIVER OF RIGHT TO HEARING PRIOR TO
MODIFICATION OF CONDITIONS OF SUPERVISION**

I have been advised by U.S. Probation Officer John S. Pyburn that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No. 1:05-CR-00009-001-DAK. The modification would be:

1. The defendant shall participate in the United States Probation and Pretrial Services Office Computer and Internet Monitoring Program under a copayment plan, and will comply with the provisions outlined in:

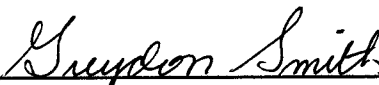
Appendix A, Limited Internet Access
(Computer and internet use, as approved)

Furthermore; all computers, internet accessible devices, media storage devices, and digital media accessible to the defendant are subject to manual inspection/search, configuration, and the installation of monitoring software and/or hardware.

2. The defendant shall not view, access, or possess sexually explicit or pornographic materials in any format.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

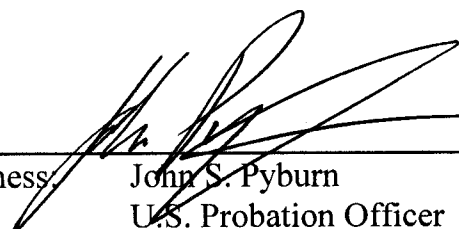
Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.



Greydon Anthony Smith

May 3, 2010

Date



Witness, John S. Pyburn
U.S. Probation Officer

UNITED STATES DISTRICT COURT

Northern

District of

UNITED STATES OF AMERICA

V.

Robert Anthony Cosentino

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 1:07-cr-000118-002 DB

USM Number: 15167-081

Benjamin Hamilton

Defendant's Attorney

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAY - 5 2010

Utah
BY S. MARK JONES, CLERK
DEPUTY CLERK

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 2

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18USC§1029	Access Device Fraud		1
18USC§1028A	Aggravated Identity Theft		2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 3 ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/29/2010

Date of Imposition of Judgment

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

4/30/2010

Date

DEFENDANT: Robert Anthony Cosentino
CASE NUMBER: DUTX 1:07-cr-000118-002 DB

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

39 months. 15 months for count 1. 24 months for count 2.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant be incarcerated in a local jail facility for the purpose of an earlier release to a halfway house in the Salt Lake City, Utah.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Robert Anthony Cosentino
CASE NUMBER: DUTX 1:07-cr-000118-002 DB

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Robert Anthony Cosentino
CASE NUMBER: DUTX 1:07-cr-000118-002 DB

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant is to inform any employer or prospective employer of his current conviction and supervision status.
2. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless he is in compliance with any established payment schedule and obtains the approval of the probation office.
3. The defendant shall provide the probation office access to all requested financial information.
4. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one time \$115.00 fee to partially defray the costs of collection and testing.
5. The defendant shall participate in a substance abuse evaluation and or treatment under a co-payment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent businesses where alcohol is the primary item of order.
6. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
7. The defendant shall remove any surveillance equipment and/or video equipment throughout the term of supervision at the direction of the probation office. No fine is imposed. Restitution \$28,473.30 with regular payments to begin immediately, is due and payable.

DEFENDANT: Robert Anthony Cosentino
CASE NUMBER: DUTX 1:07-cr-000118-002 DB

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$	\$ 28,472.30

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
SEE ATTACHED SHEET	\$28,472.30	\$28,472.30	

TOTALS	\$ <u>28,472.30</u>	\$ <u>28,472.30</u>
--------	---------------------	---------------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Name of Merchant	City, State	Amount of Fraud
Time Saver	Faulkville, GA	\$839.85
Kwik Chek	Bells, TX	\$4,130.95
Dixie Oil	Ellisville, MS	\$5,250.90
EZ Go	Lawton, OK	\$1,521.90
Li'l Cricket	Spartanburg, SC	\$1,310.75
Sandy's	Windsor, CO	\$414.95
Xtra Mart	Wells, ME	\$1,243.70
CN Brown / Big Apple Medway #1069	Medway, ME	\$814.90
Ameristop #139 / Ohio Valley AFM, Inc.	Franklin, OH	\$807.90
Lovell Lake Food Center	Sanbornville, NH	\$416.40
EZ Mart	Ashdown, AR	\$3,165.00
Wilson Farms	Potsdam, NY	\$2,469.70
Sunoco	Lowville, NY	\$819.90
Cumberland Farms	Burlington, VT	\$2,049.75
Amerda Hess	Annaville, PA	\$1,600.00
Wesco	Grand Haven, MI	\$220.00
Irving Oil	Sherman, ME	\$396.75
Circle K	Medford, OR	\$400.00
Pay Spot		\$600.00
		<hr/> \$28,473.30

Total Fraud by Card

MIO / Snap-Pay	\$6,290.00
Green Dot	\$20,900.00
Net Spend / Pay Spot	\$5,737.00
	<hr/> \$32,927.00

DEFENDANT: Robert Anthony Cosentino
CASE NUMBER: DUTX 1:07-cr-000118-002 DB

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Restitution \$28,473.30 with regular payments to begin immediately, is due and payable.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED
U.S. DISTRICT COURT
2010 MAY -5 P 2:25
DISTRICT OF UTAH
BY: [Signature]
DEPUTY CLERK

Gregory J. Sanders, USB No. 2858
Patrick C. Burt, USB No. 11138
KIPP AND CHRISTIAN, P.C.
Attorney for Defendant Safe Harbor
10 Exchange Place, 4th Floor
Salt Lake City, Utah 84111
Telephone: (801) 521-3773
gjsanders@kipbandchristian.com
pburt@kipbandchristian.com

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

KELVIN L. DAVIS & SHARON DAVIS
individually and on behalf of KTD, JTD,
and JDD,

Plaintiffs,

vs.

HONORABLE JUDGE DIANE WILKINS
ROBERT PARRISH, LAURA
THOMPSON, SONIA SWEENEY,
VERONICA KASPRZAK, WENDY
GARCIA, AMY REED, RICK SMITH,
DWAYNE BETOURNAY (in his individual
capacity), CHARLENE SANSONE, LORI
HOLMES, SAFE HARBOR, UTAH
OFFICE OF GUARDIAN AD LITEM,
UTAH OFFICE OF THE ATTORNEY
GENERAL, UTAH DIVISION OF CHILD
AND FAMILY SERVICES, & THE STATE
OF UTAH,

Defendants.

Case No. 1:07CV148 CW

ORDER OF DISMISSAL

Magistrate Judge Paul M. Warner

The court having considered the motion of Safe Harbor to dismiss and the stipulation of the plaintiffs thereto, and good cause appearing, hereby dismisses this action, without prejudice, with respect to defendant Safe Harbor only.

Each party shall bear their own costs and attorneys' fees incurred in the prosecution and defense of this action.

DATED this 5th day of May, 2010.

BY THE COURT

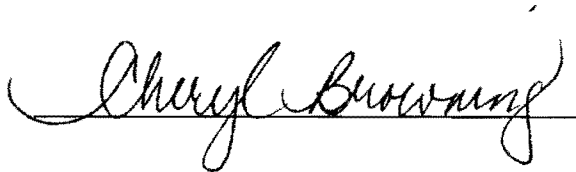

HONORABLE CLARK WADDOUPS

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2010, I caused a true and correct copy of the foregoing **ORDER OF DISMISSAL** to be e-filed through the United States District Court to the following:

Michael P. Studebaker
STUDEBAKER LAW OFFICE, LLC
2550 Washington Blvd., Suite 331
Ogden, Utah 84401

Richard K. Rathbun
Utah Attorney General's Office
160 East 300 South, 6th Floor
Post Office Box 140856
Salt Lake City, Utah 84111-0856

A handwritten signature in cursive script, reading "Cheryl Browning", written over a horizontal line.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	Case No. 1:08-CR-18 DB
Plaintiff,	:	
vs.	:	ORDER SETTING DISPOSITION
	:	DATE AND EXCLUDING TIME
JORGE MENDOZA-SANDOVAL,	:	FROM SPEEDY TRIAL
	:	COMPUTATION
Defendant.	:	

This matter came before this Court on 5/5/10 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Carlos Garcia . The United States was represented by Assistant United States Attorney Scott Romney. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

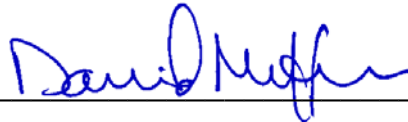
The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court ORDERS that this matter be scheduled for **6/29/10 at 3:30 p.m.** before **Judge Dee Benson**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel

for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **5/5/10** (the date of this appearance), and **6/29/10** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 5th day of May, 2010.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

JEFF HARKER,,

Plaintiff,

vs.

STEVEN SIMPSON, et al,

Defendant.

SCHEDULING ORDER

Case No. 1:08-cv-0035

District Judge Clark Waddoups

Magistrate Judge Sam Alba

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel (docket #29). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | | | |
|-----------|--|-------------------------------|
| 1. | PRELIMINARY MATTERS | <u>DATE</u> |
| | Nature of claim(s) and any affirmative defenses: | |
| a. | Was Rule 26(f)(1) Conference held? | <u>Yes</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>04/27/10</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>May</u>
<u>21, 2010</u> |
|
 | | |
| 2. | DISCOVERY LIMITATIONS | <u>NUMBER</u> |
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>50</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>unlimited</u> |
| f. | Maximum requests for production by any Party to any Party | <u>unlimited</u> |

	<u>DATE</u>
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²	
a. Last Day to File Motion to Amend Pleadings	<u>08/30/10</u>
b. Last Day to File Motion to Add Parties	<u>08/30/10</u>
4. RULE 26(a)(2) REPORTS FROM EXPERTS³	
a. Plaintiff	<u>08/30/10</u>
b. Defendant	<u>09/30/10</u>
c. Counter Reports	<u>11/30/10</u>
5. OTHER DEADLINES	
a. Discovery to be completed by:	
Fact discovery	<u>08/30/10</u>
Expert discovery	<u>12/30/10</u>
b. (optional) Final date for supplementation of disclosures and discovery under Rule 26 (e)	
c. Deadline for filing dispositive or potentially dispositive motions	<u>01/31/11</u>
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a. Referral to Court-Annexed Mediation	<u>Yes</u>
b. Referral to Court-Annexed Arbitration	
c. Evaluate case for Settlement/ADR on	
d. Settlement probability:	<u>Fair</u>
7. TRIAL AND PREPARATION FOR TRIAL:	
a. Rule 26(a)(3) Pretrial Disclosures⁴	
Plaintiffs	05/13/11
Defendants	05/27/11
b. Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)	

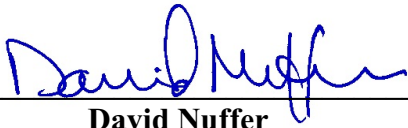
			<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before		06/10/11
d.	Settlement Conference ⁶ on or before		06/10/11
e.	Final Pretrial Conference	2:30 P.M.	06/27/11
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	i. Bench Trial		
	ii. Jury Trial	<u>Five days</u>	<u>8:30 a.m.</u> <u>07/11/11</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 4 day of May, 2010.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR 10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2010\Harker v. Simpson 108cv35CW 0504 tb.wpd

FILED
U.S. DISTRICT COURT
2009 MAY -5 A 7:12
DISTRICT OF UTAH
BY: DEPUTY CLERK

TERRY M. PLANT, #2610
PLANT, CHRISTENSEN & KANELL
Attorney for Defendants Ralph Smith Company & James Taylor
136 East South Temple, Suite 1700
Salt Lake City, Utah 84111
Telephone: (801) 363-7611
tplant@pckutah.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

KAREN UNGER, individually and as the)	
Guardian ad Litem for Madison Baumann)	
(a minor), and MADISON BAUMANN, a	)	ORDER MODIFYING
Minor,	)	SCHEDULING ORDER
)	
Plaintiffs,	)	Civil No. 1:08-CV-118
v.)	
)	
RALPH SMITH COMPANY, and James	)	Judge Ted Stewart
Taylor,)	
)	
Defendants.)	
)	

Pursuant to the stipulation of the parties, the January 27, 2009 Scheduling Order of Magistrate Judge David Nuffer shall be amended as follows:

- | | | |
|-----------|---|-------------|
| 4. | Rule 26(a)(2) Reports from Experts | DATE |
| a. | Plaintiff | 5-31-10 |
| b. | Defendant | 7-15-10 |
| c. | Counter reports | 8-16-10 |
| 5. | OTHER DEADLINES | DATE |
| a. | Discovery to be completed by: | |
| | Fact discovery | 6-30-10 |
| | Expert discovery | 8-31-10 |

7. TRIAL AND PREPARATION FOR TRIAL	DATE
a. Rule 26(a)(3) Pretrial Disclosures	
Plaintiff	9-15-10
Defendant	10-1-10
b. Final Pretrial Conference	to be determined by the Court
	10-12-10
c. Trial <u>Length</u>	
Jury Trial 5 days	10-25-10

DATED this 4th day of May 2010.

BY THE COURT:


 Ted Stewart
 United States District Judge

APPROVED AS TO FORM:

/s/ Jeffrey C. Grant
 Jeffrey C. Grant (admitted Pro Hac Vice)
 Attorneys for Plaintiffs

/s/ John R. Lund
 John R. Lund
 Attorneys for Plaintiffs

APR 28 2010

D. MARK JONES, CLERK

IN THE UNITED STATES DISTRICT COURT ^{BY} ~~COURT~~ DEPUTY CLERK

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMIE L. PLANKINTON,

Defendant.

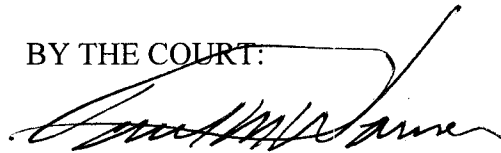
ORDER ON MOTION FOR LEAVE TO
DISMISS CASE NO. 1:09 CR 38

Magistrate Judge Warner

Based upon the Motion of the United States of America, and for good cause appearing, the Court hereby grants the government leave to dismiss the above-captioned case, with prejudice, under Rule 48(a) of the Federal Rules of Criminal Procedure.

DATED this 28th day of April, 2010.

BY THE COURT:



PAUL M. WARNER, United States Magistrate

UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

Karen Dyches Southworth

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

APR 30 2010

D. MARK JONES, CLERK

BY

DEPUTY CLERK

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX1:09-CR-00065-001 DAK

USM Number: 16460-081

Fred Metos

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 8, 9, 10, and 12 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1344	Bank Fraud	6/30/2009	8, 9, 10
18 U.S.C. § 1028A	Aggravated Identity Theft	6/30/2009	12

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1 through 7 and 11 ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/29/2010

Date of Imposition of Judgment

Dale A. Kimball

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

April 30, 2010

Date

DEFENDANT: Karen Dyches Southworth
CASE NUMBER: DUTX1:09-CR-00065-001 DAK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
30 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed in a federal correctional camp facility in Arizona, or if that is not available, then a similar camp facility somewhere else.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 6/30/2010

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Karen Dyches Southworth

CASE NUMBER: DUTX1:09-CR-00065-001 DAK

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Karen Dyches Southworth
CASE NUMBER: DUTX1:09-CR-00065-001 DAK

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant is to inform any employer or prospective employer of her current conviction and supervision status.
2. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless she is in compliance with an established payment schedule and obtains approval of the United States Probation Office.
3. The defendant shall provide the United States Probation Office access to all requested financial information.
4. The defendant is prohibited from participating in any manner in the affairs of any federally regulated financial institution.
5. The defendant shall have no direct or indirect control over the assets or funds of others.
6. The defendant shall submit her person, residence, office, or vehicle to a search, conducted by the U. S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Karen Dyches Southworth
CASE NUMBER: DUTX1:09-CR-00065-001 DAK

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 400.00	\$ 0.00	\$ 319,473.00

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
See attachment A	\$319,473.00	\$319,473.00	

TOTALS	\$ 319,473.00	\$ 319,473.00
--------	---------------	---------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Karen Dyches Southworth
CASE NUMBER: DUTX1:09-CR-00065-001 DAK

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 400.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- The \$400 Special Assessment Fee is due immediately. The restitution shall be paid according to a schedule established by the Bureau of Prisons Inmate Financial Responsibility Program while incarcerated and at a minimum rate of \$500 per month or as otherwise directed by the U. S. Probation Office upon release from confinement. The interest on the restitution is waived during the period of incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED
DISTRICT COURT
2010 MAR -5 AM 10:10
JES

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

CHRISTY MORRISON, Plaintiff, vs. MICHAEL J. ASTRUE, Commissioner of the Social Security Administration Defendant.	AMENDED SCHEDULING ORDER Civil No. 1:09CV00034 PDS Judge David Sam
--	---

The court establishes the following amended scheduling order in the above captioned case:

Plaintiff may file a reply brief by ^{May 4} ~~March 25~~, 2010.

DATED this ^{4th} ~~day of February~~ ^{May}, 2010.

BY THE COURT

David Sam
Honorable David Sam

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

DREENA M. BARKER,
Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social
Security,
Defendant.

SCHEDULING ORDER

Case No. 1:09-CV-72-SA

Before the court is Plaintiff's Stipulated Motion to Amend Scheduling Order. (Doc. 19.) Having reviewed the motion and for good cause shown, **IT IS HEREBY ORDERED** that Plaintiff's motion is **GRANTED**. The parties' briefs are due on the following dates:

PLAINTIFF: June 3, 2010

COMMISSIONER: June 30, 2010

PLAINTIFF'S REPLY (if any): July 21, 2010.

All other terms in the original Scheduling Order remain in full force and effect.

DATED this 4th day of May, 2010.

BY THE COURT:



Samuel Alba
United States Magistrate Judge

FILED
U.S. DISTRICT COURT

2010 MAY -5 P 3:31

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Shawn P. Bailey (#9905)
sbailey@cachelaw.com
BEARNSON & PECK, L.C.
399 N Main Street, Suite 300
Logan, Utah 84321
Telephone : (435) 787-9700
Facsimile: (435) 787-2455

RECEIVED

APR 08 2010

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

In the Matter of:

M.B., a minor.

ORDER APPROVING SETTLEMENT

Civil No. 1:09-cv-88

District Court Judge Bruce S. Jenkins

Jeremy Butler's Petition for Approval of Minor's Settlement came on regularly for hearing before the above-entitled Court, the Honorable Bruce S. Jenkins, District Court Judge, on the 29th day of January, 2010. M.B., a minor child, appeared by and through his natural father and guardian, Jeremy Butler. Defendants appeared through their attorney, David N. Wolf, Assistant Attorney General. The Court having reviewed the Consents to Settlement and Waivers of Service, and being fully informed,

HEREBY ORDERS that:

1. Jeremy Butler, has been appointed to serve as Conservator for M.B. pursuant to the laws of the State of Utah;

2. The settlement of all claims of M.B. against Jonathon Mack and John Does 1-10 is approved upon payment of Fifteen Thousand Dollars (\$15,000.00) by the Division of Risk Management of the Utah Department of Administrative Services, on behalf of Defendants, to Jeremy Butler, as conservator for the Estate of M.B. and Bearnson & Peck, LC;

3. Jeremy Butler and Julliette Hullett are authorized to execute, for and on behalf of M.B., a release of all his claims against Defendants, arising out of the incident of June 11, 2008.

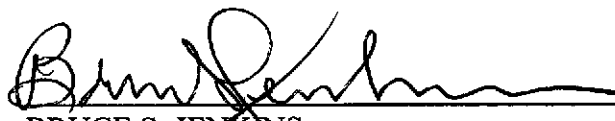
4. The Fifteen Thousand Dollars (\$15,000.00) be paid to Jeremy Butler, as conservator of the Estate of M.B. and Bearnson & Peck, LC, shall be allocated as follows:

Settlement	\$15,000.00
Less legal fees and costs	\$6,237.69
Remainder	\$8,762.31

The remaining Eight Thousand Seven Hundred and Sixty-Two Dollars and Thirty-One cents (\$8,762.31) shall be placed in an interest bearing, federally-insured conservatorship account for the Estate of M.B., in a Utah financial institution for the care, support, and education of M.B.

DATED this 5th day of MAY, 2010

BY THE COURT



BRUCE S. JENKINS
United States District Court Judge

Approved as to form and substance:

/s/Shawn P. Bailey
Shawn P. Bailey
Attorney for Plaintiff

Approved as to form and substance:

/s/David N. Wolf
David N. Wolf
Attorney for Defendant

S. GRACE ACOSTA #9836
KEVIN D. SWENSON #5803
DUNN & DUNN, P.C.
505 East 200 South, 2nd Floor
Salt Lake City, Utah 84102
Telephone: (801) 521-6677
Facsimile: (801) 521-9998
gacosta@dunndunn.com
mcollins@dunndunn.com

Attorneys for removing party defendant American Family Mutual Insurance Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

KATIE and PAUL CHRISTENSEN,

Plaintiff,

v.

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY,

Defendant.

**ORDER GRANTING MOTION FOR
PROTECTIVE ORDER**

Case No.: 1:09-cv-94

Judge: Ted Stewart

Pursuant to the parties' Motion and Stipulation for Entry of Protective Order Governing the Disclosure of Confidential Information, and good cause appearing,

IT IS HEREBY ORDERED that the motion (docket no. 21) is GRANTED as follows:

1. As used herein, "Confidential Information" shall mean information which is not otherwise available to the public and which, in the reasonable and good faith belief of the designating party, discloses a trade secret or other confidential research, development,

manufacturing, financial or commercial information, including licensing information, of the designating party, which justice requires be protected from disclosure. "Designating Party" means the party who designates documents, discovery responses or testimony as Confidential Information under this Order.

2. Any party may designate documents and discovery responses it produced in this case as Confidential Information by stamping it "Confidential Information" as provided in paragraph 8 herein. All copies, summaries or descriptions of the Confidential Information shall be treated as Confidential Information that is subject to the Order.

3. Except as otherwise may be provided by this Order, or by further order of the Court, access to Confidential Information shall be limited to:

- (a) the Court and its officers;
- (b) designated witnesses (as provided in paragraph 6 herein), court reporters at depositions, hearings or other proceedings in this action, and the mediator(s) or arbitrator that the parties agree to employ for mediation or arbitration of this matter;
- (c) attorneys of record in this action, including the secretarial, legal assistants and office staffs of such attorneys, which shall include in-house counsel and their designated staff personnel from which they require assistance;
- (d) Persons engaged by attorneys of record in this action to assist them in the preparation of this action, including independent experts and consultants and their employees; and
- (e) The parties to this action, their officers, directors and employees, and persons engaged by the parties to assist them in the preparation of this action, including independent

experts and consultants and their employees (collectively, the "Approved Persons").

Approved Persons having access to Confidential Information shall not disclose such information to any person not bound by this Order.

4. Confidential Information shall not be used or disclosed by any party to this litigation, or by any person granted access thereto under this Order, for any business or competitive purpose or for any purpose other than the preparation and trial of this action. No party and no person granted access under this Order shall disclose Confidential Information, or any information therefrom, except as provided in this Order. Notwithstanding the foregoing, this Order does not restrict the right of the Designating Party to make such use or disclosure of its own documents or material that have been designated as Confidential Information as it otherwise is entitled to make.

5. Any person described in paragraphs 3(d) and 3 (e) herein, having access to confidential Information shall be informed of this Stipulation and Order and shall agree in writing to be bound by the terms of this Order by executing a copy of Exhibit A (Which shall be maintained by the attorneys of record in this action) prior to being shown Confidential Information. Counsel for the parties to this Order shall each maintain a list of the Approved Person(s) who provide to counsel an executed copy of Exhibit A, along with the date on which the Approved Person(s) executed Exhibit A, the date on which the Approved Person(s) were given access to Confidential Information by counsel and the Confidential Information to which the Approved Person(s) was

given access by counsel. Counsel will make said list available in a timely manner to counsel for any party to this Order upon counsel's request for same.

6. Any party seeking to disclose Confidential Information to any witness, including an Approved Person, at a deposition, hearing or other proceeding in this action, shall inform the party who made the designation at least ten (10) court days prior to making such disclosure and no disclosure shall be made if the party who made the designation files a motion for protective order thereto. If there is no objection, the witness shall agree in writing to be bound by the terms of this Order by executing a copy of Exhibit A (which shall be maintained by the attorneys of record for the party seeking to reveal the Confidential Information to the witness) in advance of being shown the Confidential Information. The parties (and its counsel) shall request all witnesses to whom they seek to show Confidential Information to execute a copy of Exhibit A. Neither the parties nor their counsel shall discourage any witness from signing a copy of Exhibit A. However, if a witness refuses to execute a copy of Exhibit A, Confidential Information may not be disclosed to such witness.

7. An Approved Person may disclose Confidential Information in response to a subpoena or order of a court with jurisdiction or other governmental entity, but not prior to the return date or date of production specified in the subpoena or order. The Approved Person shall give written notice of such subpoena or order within five calendar (5) days of receipt thereof to the Designating Party. Such Approved Person may produce Confidential Information in compliance with the subpoena or order unless the Approved Person has been given timely advance notice

that an order quashing or limiting the subpoena or staying or limiting the order of disclosure has been entered or that a motion for such an order has been filed.

8. In the production of documents or responses to discovery by any party hereto, Confidential Information shall be designated by marking each document in which such Confidential Information is contained. Such marking shall be made prior to the transmission of a physical copy of such document to the party requesting such document, and shall be in substantially the following form:

CONFIDENTIAL INFORMATION

SUBJECT TO PROTECTIVE ORDER

The foregoing designation shall be applied by a rubber stamp, clear sticker or other suitable means to the document.

9. In connection with the taking of any deposition in this action:

a. Counsel for any party hereto may, prior to or at the commencement of any such deposition, temporarily designate the entire deposition transcript as Confidential Information . In that event, the Designating Party shall give a copy of this Order to the court reporter reporting the deposition and shall request that such reporter execute a copy of Exhibit A, which shall constitute an agreement that he or she, his or her employees, and his or her agents shall be bound by the terms of this Order, and shall make no use or disclosure of Confidential Information unless expressly permitted by the terms of this Order, or by the express consent of the Designating Party, or by a Court order obtained upon motion by the party seeking

use or disclosure. Such acknowledgment thereafter shall remain in effect for any subsequent depositions reported by such reporter.

b. When any party has designated temporarily the entire deposition transcript as Confidential Information, the designation will be deemed withdrawn unless the Designating Party, within twenty-five (25) days after receipt of the transcript, marks as Confidential Information those specific pages of the transcript constituting Confidential Information, thus rescinding the Confidential Information designation of all remaining pages, and notifies all other parties hereto and the reporter in writing which pages are deemed to constitute Confidential Information.

10. All Confidential Information filed or lodged with the Court shall be filed or lodged in securely sealed envelopes or other appropriately sealed containers, on which shall be endorsed:

- a. the title of this action;
- b. an indication of the nature of the contents;
- c. the words "CONFIDENTIAL INFORMATION;" and
- d. a statement substantially in the following form: "Subject to Protective Order. Not to be Opened or the Contents Revealed Except (1) to the Court and Then Resealed, (2) by Written Agreement of the Parties, or (3) by Order of This Court."

11. Any party to this action may at any time notify the other parties hereto in writing of its objection that a portion or all of the information previously designated as Confidential Information is not entitled to such protection under the terms of this Order. Upon the sending of

such written notice, the parties shall meet and confer in good faith regarding such designation. The parties can agree during the meet and confer process, or at any other time, to partially designate information so it may be disclosed to persons other than Approved Persons. If the parties cannot agree, the party designating the document as confidential shall seek a motion for protective order to have the Court determine that the document is to be designated as confidential. Pending the resolution of the motion, the document shall be treated as confidential.

12. All Confidential Information produced pursuant to this Order shall be maintained in a secure facility with all reasonable measures being taken by the party with custody of such Confidential Information to ensure the confidentiality of such information in accordance with the terms of this Order.

13. If a party to this Stipulation and Order (or its counsel) becomes aware that disclosure of Confidential Information has been made to other than an Approved Person, such party (or its counsel) shall immediately inform counsel for the party whose Confidential Information has thus been disclosed of all relevant information concerning the nature and circumstances of such disclosure, and such party shall promptly take all reasonable measures to prevent further or greater unauthorized disclosure of the Confidential Information.

14. If a party discovers that it has produced information which is not designated as Confidential Information but which it intended to have so designated, and such failure to designate was the result of mistake, inadvertence or excusable neglect, the party can make such designation after the fact so long as it does so within a reasonable time after the disclosure.

15. If information subject to a claim of attorney-client privilege or attorney work product is nevertheless inadvertently disclosed to another party, such disclosure shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege or attorney work product to which the disclosing party or other person would otherwise be entitled. If a claim of inadvertent disclosure is made, pursuant to this paragraph, with respect to information then in the custody of another party, such party shall promptly return to the claiming party or person that material as to which the claim of inadvertent disclosure has been made. The party returning such material then may move the Court for an order compelling production of the material.

16. Upon final termination of this action, counsel for each party shall inform opposing counsel as to the desired disposition of Confidential Information in the possession of the other party (and/or its counsel). The Confidential Information, except for that incorporated in the work product of counsel for parties to this action, shall either be assembled and returned to the Designating Party or destroyed, according to the desires of the Designating Party, within sixty (60) calendar days of a request by the Designating Party to the party to whom the information was produced. Hard copies of Confidential Information incorporated into the work product of counsel for the party receiving such Confidential Information shall be destroyed within 60 days of the final termination of this Action. Counsel for plaintiff shall maintain an electronic copy of such Confidential Information for purposes such as malpractice requirements for seven (7) years.

17. The Designating Party may request that the clerk of the Court return to the party that filed them all documents that have been filed or lodged with the Court and have been sealed as

confidential pursuant to this Stipulation and Order. If such documents cannot be returned by the clerk, the Designating Party may request that the clerk maintain in perpetuity, under seal, all papers filed under seal with the Court.

18. This Order shall be without prejudice to the right of any party to challenge the propriety of discovery on other grounds, and nothing contained herein shall be construed as a waiver of any applicable privilege, nor of any objection that might be raised as to the admissibility at trial of any evidentiary material. The parties reserve all rights to apply to the Court for an order modifying this Order or seeking further protection on this or other issues, and this Order shall not be construed to preclude a party from applying for or obtaining such further protection.

19. Except as specifically provided herein, the terms, conditions and limitations of this Stipulation and Order shall survive the termination of this action, and the Court shall retain jurisdiction with respect to this Stipulation and Order following termination of this action. If a party to the Stipulation and Order violates this Stipulation and Order and does not take steps to immediately remedy such violation (by the return of all documents and copies thereof to the party who designated them confidential within 10 days) shall be subject to a motion to the court for contempt of court, fines, sanction and any other punishment deemed just and proper by the Court. If a designating party is forced to seek court intervention in order to enforce this Stipulation and Order, the prevailing party of such court intervention (e.g., motion or suit) shall recover from the non-winning party attorney fees and costs incurred in enforcing this Stipulation and Order.

20. No part of the terms, conditions or limitations imposed by this Order may be modified or terminated except by (a) written stipulation executed by counsel of record for each party hereto or (b) order of the Court.

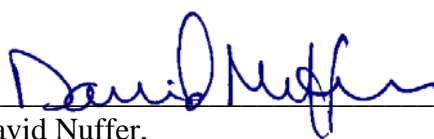
21. Any third party upon whom the parties serve a subpoena requesting documents or other information in this action may avail themselves of this Order and, by signing the Stipulation, shall become a party to this Stipulation and Order.

22. Nothing in this Order shall be construed as an admission or agreement or concession that materials created and/or maintained by Plaintiffs and obtained by Defendants and/or any of their agents or employees while working for Plaintiffs and/or any of their subsidiaries and affiliates do not constitute confidential information, trade secrets, and/or similar protected material for purposes of the issues of the above referenced action, notwithstanding their discoverability and/or the fact that such materials are now in Defendants' possession.

23. The provisions of paragraph 6 of this order shall not apply to any deposition conducted less than five (5) days from the date of this Order's execution.

ENTERED this _4th_ day of _May, 2010.

BY THE COURT:



David Nuffer,
UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM:

_____/s/_____
ERIK M. WARD
RICHARD T. WILLIAMS
Counsel for Plaintiff

APPROVED AS TO FORM:

_____/s/_____
S. GRACE ACOSTA
KEVIN D. SWENSON
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH NORTHERN DIVISION

Tony Reith, Jr.,

SCHEDULING ORDER

Plaintiff,

Case No. 1:09:cv-00112

vs.

District Judge Clark Waddoups

United States of America,

Magistrate Judge Samuel Alba

Defendant

United States of America,

Counterclaim Plaintiff

vs.

Tony Reith, Jr.; and Richard Nebeker,

Counterclaim Defendants.

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel (docket #17). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS

DATE

Nature of claim(s) and any affirmative defenses:

- | | |
|---|-----------------|
| a. Was Rule 26(f)(1) Conference held? | <u>04/28/10</u> |
| b. Has Attorney Planning Meeting Form been submitted? | <u>04/30/10</u> |
| c. Was 26(a)(1) initial disclosure completed? | <u>05/18/10</u> |

2.	DISCOVERY LIMITATIONS	<u>NUMBER</u>
a.	Maximum Number of Depositions by Plaintiff(s)	<u>10</u>
b.	Maximum Number of Depositions by Defendant(s)	<u>10</u>
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>7</u>
d.	Maximum Interrogatories by any Party to any Party	<u>25</u>
e.	Maximum requests for admissions by any Party to any Party	<u>20</u>
f.	Maximum requests for production by any Party to any Party	<u>25</u>
g.	Discovery of electronically stored information should be handled as follows: The parties do not believe that claims or defenses will involve extensive discovery of electronically stored information, although the Internal Revenue Service maintains some information and records in electronic form. The United States notes that, in the instant case, to the extent that Electronically Stored Information ("ESI") exists, such information may be sought from the Defendant /Counterclaim Plaintiff to the extent necessary to authenticate documents or to ascertain the completeness of discovery. The United States further states that certain ESI in its possession may be protected under Section 6103 of the Internal Revenue Code and/or other privileges. Non-privileged ESI will be produced in paper form.	
h.	Claim of privilege or protection as trial preparation material asserted after production shall be handled as follows: <i>No agreement at this time.</i>	
		<u>DATE</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES²	
a.	Last Day to File Motion to Amend Pleadings	<u>07/31/10</u>
b.	Last Day to File Motion to Add Parties	<u>07/31/10</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS³	
a.	Plaintiff	<u>02/25/11</u>
b.	Defendant	<u>02/25/11</u>
c.	Counter reports	<u>03/25/11</u>

5. OTHER DEADLINES

- a. Discovery to be completed by:
- | | |
|------------------|-----------------|
| Fact discovery | <u>02/01/11</u> |
| Expert discovery | <u>03/25/11</u> |
- b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e) (Per rule)
- c. Deadline for filing dispositive or potentially dispositive motions 04/15/11

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

- a. Referral to Court-Annexed Mediation No
- b. Referral to Court-Annexed Arbitration No
- c. Evaluate case for Settlement/ADR on 02/01/11
- d. Settlement probability: Fair

7. TRIAL AND PREPARATION FOR TRIAL:

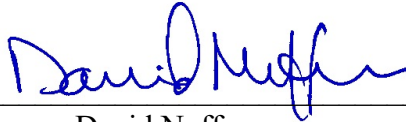
- a. Rule 26(a)(3) Pretrial Disclosures⁴
- | | | |
|-----------|--|-----------------|
| Plaintiff | | 07/22/11 |
| Defendant | | 08/05/11 |
- b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)
- DATE**
- c. Special Attorney Conference⁵ on or before **08/19/11**
- d. Settlement Conference⁶ on or before 08/19/11
- e. Final Pretrial Conference 2:30 p.m. 09/06/11
- f. Trial
- | | <u>Length</u> | <u>Time</u> | <u>Date</u> |
|----------------|---------------|------------------|-----------------|
| i. Bench Trial | | | |
| ii. Jury Trial | <u>4 days</u> | <u>8:30 a.m.</u> | <u>09/19/11</u> |

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 4th_ day of _____ May, 2010_.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

DONALD L. DALTON – 4305
DALTON & KELLEY, PLC
Post Office Box 58084
Salt Lake City, Utah 84158
Telephone: (801) 583-2510

Attorneys for IMC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION**

KEVIN D. KUNZ and INVESTMENT
MANAGEMENT CORP.,

Plaintiffs,

Vs.

JPH ENTERPRISES, LLC and PATRICIA
HORNE, TRUSTEE, VANCE B. FORSGREN
FAMILY TRUST,

Defendants.

**ORDER GRANTING MOTION
FOR ENLARGEMENT OF TIME
TO FILE AND SERVE
MEMORANDUM IN
OPPOSITION TO MOTION FOR
ORDER CONFIRMING
ARBITRATION AWARD**

Case No. 1:09-cv-00115 DAK

Plaintiff Investment Management Corp.’s (“IMC”) Motion for Enlargement of Time to File and Serve Memorandum in Opposition to Defendants’ Motion for Order Confirming Arbitration Award (Dkt. #18) came on before the Court. For the reasons stated, and good cause appearing therefor, IT IS HEREBY

ORDERED that IMC shall have to and including May 20, 2010 in which to file and serve a memorandum in opposition to Defendants’ Motion for Order Confirming Arbitration Award (Dkt. #18).

DATED this 5th day of May, 2010.

BY THE COURT

A handwritten signature in black ink, reading "Dale A. Kimball". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

Honorable Dale A. Kimball
United States District Court

FILED
U.S. DISTRICT COURT

2010 MAY -5 P 3:32

DISTRICT CLERK

BY DEPUTY CLERK

RECEIVED

APR 28 2010

**OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS**

Julianne P. Blanch #6495
Snow, Christensen & Martineau
10 Exchange Place
Post Office Box 4500
Salt Lake City, Utah 84145
Telephone: (801) 521-9000 (Main No.)
Facsimile: (801) 363-0400
Email: jpb@scmlaw.com

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

AMERICAN NUTRITION, INC., a Utah
corporation,

Plaintiff,

vs.

THE PETERSON COMPANY, a Michigan
corporation,

Defendant.

**PROTECTIVE ORDER GOVERNING
DISCLOSURE OF AMERICAN
NUTRITION, INC. DOCUMENTS**

Case No. 1:09cv00128

Judge Bruce S. Jenkins

Based upon the Stipulation of the parties, and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. This Order governs the handling and disclosure of all materials produced, given, or filed herein by the parties which Plaintiff designates as Confidential or a trade secret.
2. Definitions.

(a) "Document" means all writings, drawings, graphs, charts, recordings, and any other documents, including, but not limited to, the documents produced by American Nutrition, Inc. ("ANI") in the course of discovery.

(b) "Material" means any document, any answer to any interrogatory or other discovery request in this action, any portion of any deposition (including deposition exhibits) in this action, and any other information produced, given, or filed in this action.

(c) "Confidential Information" means any documents, tangible things or responses to discovery requests, which are designated by the providing party as being confidential. All copies made of said documents, tangible things, and responses to discovery requests shall also be Confidential Information. Additionally, any notes, analyses, memoranda and other compilations taken or made from the examination of Confidential Information shall be Confidential Information.

(d) "Parties" means Plaintiff American Nutrition, Inc. ("ANI") and Defendant The Peterson Company ("Peterson"), their agents, assigns and representatives.

3. A party or witness may designate as Confidential any material produced in the course of discovery that contains confidential information by writing, typing, or stamping on the face of such material the words "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER," or by otherwise notifying counsel for the parties in writing, and, in the case of deposition transcripts and exhibits, also the court reporter, at the time of the production of the document or within twenty (20) days of receipt of the deposition transcript. In the event confidential information is contained in any written response to a discovery request, in any deposition transcript, or in any exhibit thereto, the confidential portion of such response, transcript, or exhibit shall be separately

bound, and the words "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" or similar wording shall be placed thereon. Such legend need not be placed upon copies produced or exchanged.

4. Each page of each such document shall be stamped "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER." Such confidential information may be disclosed only to:

- (a) Counsel for a party to this litigation and their paralegal, secretarial, and clerical employees, including employees of temporary personnel services, who are actively engaged in assisting counsel in the preparation of this litigation;
- (b) Employees of a party including, without limitation, employee deponents, officers or directors;
- (c) Actual or proposed expert witnesses and other experts or consultants of a party designated as an expert in connection with this litigation;
- (d) Persons noticed for deposition or potential witnesses at the trial of the captioned matter;
- (e) Upon court order or consent of parties, any person serving as a juror in a trial of the captioned matter;
- (f) Court reporters and persons preparing transcripts of testimony or exhibits, or photocopies, provided, however, that counsel for the party making such disclosure is obligated to notify such persons that such documents are confidential and subject to this Protective Order and such counsel takes reasonable steps to preserve the confidentiality of such protected documents; and

(g) The Court.

offer to limit self
Each person specified herein shall be referred to as a "qualified person." Each qualified person shall agree to be bound by the terms of this Protective Order prior to any Confidential information being received by them.

5. In the event confidential, proprietary or sensitive material is inadvertently produced without placing the designation "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" thereon, the party or witness may, subsequent to the production designate the material as "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER." In such event, the material shall be treated in accordance with the terms of this Order from the time of the designation.

6. Should a party object to the designation of any material as confidential information, that party may appeal to the Court for a ruling that the material shall not be so treated within twenty (20) days of receiving materials designated as confidential. Until the Court enters an order, if any, changing the designation of the material, it shall continue to be treated as confidential and as a protected document as provided in this Order.

7. All Confidential Information shall remain in the possession of the parties or their attorneys or the person to whom disclosure is originally made, and they shall not permit any such confidential matter to leave their possession or the possession of those assisting counsel of record as designated, absent court order.

8. All confidential information, and information derived therefrom, shall be used solely in the prosecution or defense of this litigation. Without limiting the foregoing, confidential information may not be used by any opposing party or any third party for any business, competitive, or other purpose whatsoever.

9. Confidential information developed, revealed or included within any discovery proceeding, formal or informal, whether in the form of deposition, transcripts, interrogatory answers, document production or contained in motions, affidavits, brief or other documents submitted to the Court, shall be subject to this Protective Order, if designated by either of the parties as Confidential, and the Clerk is directed to maintain such documents, when properly designated as Confidential, under seal. Such documents shall be made available only to the Court and to named counsel of record in this proceeding until further order of the Court.

10. Any party may apply to the Court, on reasonable notice to the other parties or producing entities, for relief from or modification of any provision of this Protective Order. Any disputes, concerning objections and other matters falling within the scope of, or relating to the interpretation of, this Order shall be submitted to the Court for determination.

11. Upon settlement or final judgment, all copies of confidential documents in the possession of counsel of any other persons ^{other than the court} provided access to said documents under this Order, shall be returned to the party by whom the documents were produced within ten (10) days, upon written request, or shall be destroyed or stored in a manner that preserves the protections set forth in this Protective Order.

12. Nothing in this Protective Order shall be construed as granting or implying any right under any Letter Patent.

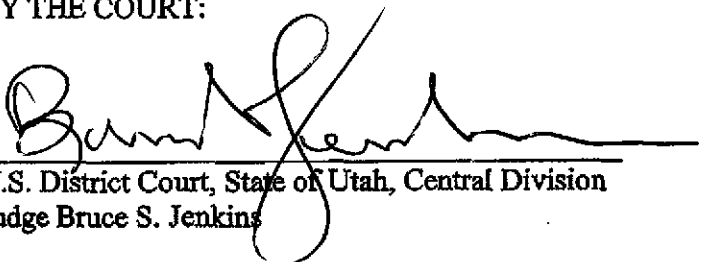
13. Nothing in this Protective Order shall alter the burden and standards of proof under the Rule 26(c) of the Federal Rules of Civil Procedure for resolving motions made to the Court concerning this Protective Order.

14. Each person who receives confidential information submits himself or herself to the personal jurisdiction of the Court, wherever he or she shall be, for enforcement.

15. If information such as formulas, processes, recipes, techniques, or other such trade secret information or highly sensitive information is sought in discovery that either one of the parties or a third party that has an interest in such information seeks to restrict to a greater degree than "CONFIDENTIAL" information, then such information may be disclosed with a stamp indicating "TRADE SECRET INFORMATION – SUBJECT TO PROTECTIVE ORDER" or similar wording. Such information shall be reviewed only by legal counsel for the parties and appropriate legal support staff unless (1) written authorization has been provided for such information to be shared under the same restriction as information marked "CONFIDENTIAL", or (2) the Court has ordered broader dissemination of the Trade Secrets information, in the event that the parties are unable to agree upon who beyond legal counsel will be able to review such information.

DATED this 5th day of May, 2010.

BY THE COURT:



U.S. District Court, State of Utah, Central Division
Judge Bruce S. Jenkins

FILED
U.S. DISTRICT COURT
HE
200 MAY -5 A.D. 19

)

)Civil No. 09-cv-00148-DS

)

)

)

)

)

)

)

)

)

)

)

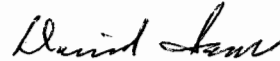
4876780.1

D. Deadline for filing dispositive motions:

December 3, 2010

DATED this 4th day of May, 2010.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "David Sam", written over a horizontal line.

David Sam
Senior Judge
United States District Court

**IN THE UNITED STATES DISTRICT COURT, NORTHERN DIVISION
DISTRICT OF UTAH**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TRUDY GILLMAN,

Defendant.

**MEMORANDUM DECISION AND
ORDER GRANTING DEFENDANT'S
MOTION TO CONTINUE AND
EXCLUDING TIME**

Case No. 1:10-CR-16 TS

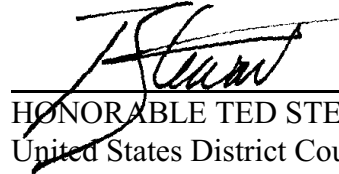
Honorable Ted Stewart

Based upon the motion and stipulation of counsel the Court finds as follows: Defendant's counsel needs additional time to review the existing voluminous discovery covering several years as provided by the government and also to conduct Defendant's own investigation. Plea negotiations cannot be completed until after discovery is reviewed and Defendant's investigation is completed. The Court finds that the failure to grant a continuance in these circumstances would deny counsel for the defendant the time necessary for effective trial preparation, taking into account counsel's due diligence regarding the voluminous discovery. Granting a continuance in the above-entitled matter outweighs the best interests of the public and the defendants in a speedy trial. Pursuant to Title 18, § 3161(h)(7) of the Speedy Trial Act, the period of delay resulting from this continuance to the date of the new trial is hereby ordered excludable pursuant to the Act.

IT IS FURTHER ORDERED that the Jury Trial be continued to the
30th day of August, 2010, at the hour of 8:30 a.m, before Judge Stewart.

SIGNED BY MY HAND this 5th day of May, 2010.

BY THE COURT:



HONORABLE TED STEWART
United States District Court Judge

FILED
U.S. DISTRICT COURT
2010 District of Utah: 38
DISTRICT OF UTAH
BY: *[Signature]*
CLERK OF COURT

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

v.

Jaime Vasquez-Aguilar

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX1:10-CR-00018-001 DAK

USM Number: 16832-081

Benjamin McMurray

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment.

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. § 1326	Reentry of a Previously Removed Alien	10/19/2009	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/3/2010

Date of Imposition of Judgment

Dale A. Kimball

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

Date

May 4, 2010

DEFENDANT: Jaime Vasquez-Aguilar
CASE NUMBER: DUTX1:10-CR-00018-001 DAK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

24 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed in a federal correctional institution in Arizona or California.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jaime Vasquez-Aguilar

CASE NUMBER: DUTX1:10-CR-00018-001 DAK

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jaime Vasquez-Aguilar

CASE NUMBER: DUTX1:10-CR-00018-001 DAK

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the U.S. Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the U.S. Probation Office in the District of Utah within 72 hours of arrival in the United States.

CRIMINAL MONETARY PENALTIES

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jaime Vasquez-Aguilar
CASE NUMBER: DUTX1:10-CR-00018-001 DAK

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 17 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

RONALD FUJINO # 5387
Attorney for Defendant
4764 South 900 East Suite 2
Salt Lake City, Utah 84117
Telephone: (801) 268-6735
Fax: (801) 281-1636
counsel356@msn.com

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JASON LYNN SCOGGAN,

Defendant.

Case No. 1:10-CR-24 TS

**ORDER SETTING CHANGE
OF PLEA HEARING**

Judge Ted Stewart

Based upon Motion of the Defendant, Stipulation by the Government, and Good Cause appearing, the Court hereby ORDERS that Mr. Scoggan's change of plea hearing be set on the 15th day of June, 2010, at the hour of 2:00 p.m.

The Court finds that the best interest of the public and the defendant dictate the continuance, and therefore this time shall be excluded from the time allowed for the trial

//

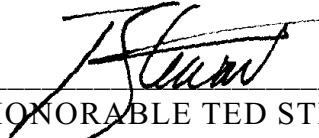
//

//

under the Speedy Trial Act, 18 U.S.C. § 3161.

ORDERED BY THE COURT

Dated this 4th day of May, 2010

A handwritten signature in black ink, appearing to read "T. Stewart", is written over a horizontal line.

THE HONORABLE TED STEWART
U.S. DISTRICT COURT JUDGE

FILED
U.S. DISTRICT COURT
2010 MAY -5 P 2 25

MARY C. CORPORON #734
Attorney for Defendant, Jose Garbriel Lizarraga
CORPORON & WILLIAMS, P.C.
405 South Main Street, Suite #700
Salt Lake City, Utah 84111
Telephone: (801) 328-1162
Facsimile: (801) 328-9565

IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	ORDER EXTENDING TIME IN WHICH
	:	TO FILE PRE-TRIAL MOTIONS
Plaintiff,	:	
	:	
-vs-	:	
	:	Case No. 1:10 CR 00032
JOSE GARBRIEL LIZARRAGA,	:	
	:	
Defendant.	:	Judge Clark Waddoups


BASED UPON the motion of the Defendant, and for good cause appearing, therefore:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

That the Defendant, Jose Garbriel Lizarraga, is granted an extension of time in which to file pre-trial motions, until May 31, 2010.

DATED this 5th day of May, 2010.

BY THE COURT:


HONORABLE CLARK WADDOUPS
United States District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused the foregoing to be provided to:

ERIC G. BENSON
Assistant United States Attorney
Office of the U.S. Attorney
185 South State, #400
Salt Lake City, Utah 84111

on the 3rd day of May, 2010.

/s/ Tauni Lee

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

UNITED STATES DISTRICT COURT

Central

District of

UNITED STATES OF AMERICA

V.

John Murray

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

Case Number: DUTX 2:04-cr-000206-001

USM Number: 11393-081

Daryl P. Sam

Defendant's Attorney

MAY - 5 2010
D. MARK JONES, CLERK
DEPUTY CLERK
Utah

THE DEFENDANT:

☒ admitted guilt to violation of condition(s) 1 and 3 of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1.	Failed to Report to the USPO within 72 hours of release.	12/12/2008
3.	Committed Another Federal, State, or Local Crime: Unlawful Possession of Another's ID	12/20/2008

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's Residence Address:

N/A

Defendant's Mailing Address:

N/A

4/29/2010

Date of Imposition of Judgment

Signature of Judge

Dee Benson

Name of Judge

Title of Judge

4/29/2010

Date

DEFENDANT: John Murray
CASE NUMBER: DUTX 2:04-cr-000206-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

9 months. The defendant shall receive credit for time served.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: John Murray

CASE NUMBER: DUTX 2:04-cr-000206-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
47 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: John Murray
CASE NUMBER: DUTX 2:04-cr-000206-001

SPECIAL CONDITIONS OF SUPERVISION

All previously imposed conditions are reimposed:

1. The defendant shall not use or possess alcohol, nor frequent businesses where alcohol is the chief item of order.
2. The defendant shall participate in a mental-health treatment and/or substance-abuse treatment program under a copayment plan as directed by the probation office, and take any mental-health medications as prescribed.
3. The defendant shall reside in a residential reentry center under a Public Law placement for a period of 180 days, with release for work, education, medical, religious services, treatment, or other approved release as deemed appropriate by the probation office or residential reentry center.
4. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

United States District Court
for the District of Utah

RECEIVED

MAY - 3 2010

Request and Order for Modifying Conditions of Supervision

With Consent of the Offender

(Waiver of hearing attached)

OFFICE OF
JUDGE TENA CAMPBELL

Name of Offender: **Joe Rakes**

Docket Number: **2:04-CR-00271-001-TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell**
Chief U.S. District Judge

Date of Original Sentence: **February 16, 2005**

Original Offense: **Counterfeiting**

Original Sentence: **15 months Bureau of Prisons and 36 months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **February 27, 2010**

PETITIONING THE COURT

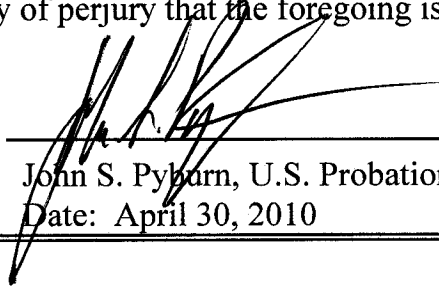
☒ To modify the conditions of supervision as follows:

The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

CAUSE

The defendant agrees by consent to the amending of the current conditions of release to include the Search and Seizure condition utilized by the U.S. Probation Office.

I declare under penalty of perjury that the foregoing is true and correct



John S. Pyburn, U.S. Probation Officer
Date: April 30, 2010

THE COURT ORDERS:

- ☒ The modification of conditions as noted above
☐ No action
☐ Other

Tena Campbell

Honorable Tena Campbell
Chief U.S. District Judge

Date: May 4, 2010

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
PROBATION AND PRETRIAL SERVICES OFFICE**

**WAIVER OF RIGHT TO HEARING PRIOR TO
MODIFICATION OF CONDITIONS OF SUPERVISION**

I have been advised by U.S. Probation Officer John S. Pyburn that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:04-CR-00271-001-TC. The modification would be:


The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

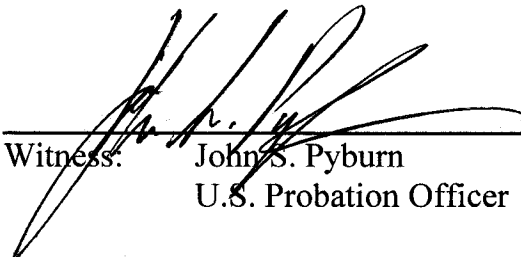
Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.



Joe Rakes



Date



Witness: John S. Pyburn
U.S. Probation Officer

**Report and Order Terminating supervised release
Prior to Original Expiration Date****UNITED STATES DISTRICT COURT**

for the

DISTRICT OF UTAH

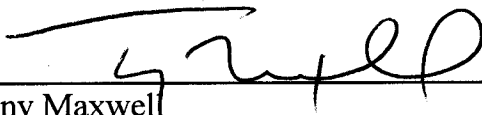
UNITED STATES OF AMERICA

v. Criminal No. 2:04-CR-00782-001-TC

NATHAN BRADY BATES

On March 22, 2005 the above named was placed on supervised release for a period of three years. The defendant has complied with the rules and regulations of supervised release and is no longer in need of supervision. It is accordingly recommended that the defendant be discharged from supervision.


Respectfully submitted,



Tony Maxwell
United States Probation Officer

Pursuant to the above report, it is ordered that the defendant be discharged from supervision and that the proceedings in the case be terminated.

Dated this 4 day of May, 2010.



Tena Campbell
Chief United States District Judge

Prepared by:

Michael W. Homer (#1535)
Jesse C. Trentadue (#4961)
Brian D. Bolinder (#11032)
SUITTER AXLAND, PLLC
8 East Broadway, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 532-7300
Facsimile: (801) 532-7355

Attorneys for Defendant Travelers Indemnity Company of Connecticut

IN THE UNITED STATES DISTRICT COURT

STATE OF UTAH, CENTRAL DIVISION

JOHN F. MULLIN and DIANE L. MULLIN,	:	
individuals,	:	
	:	
Plaintiffs,	:	ORDER GRANTING STIPULATED
	:	MOTION TO AMEND AND
	:	AMENDED SCHEDULING ORDER
vs.	:	
	:	
TRAVELERS INDEMNITY COMPANY	:	Case No. 2:05CV00971 CW
OF CONNECTICUT, a Delaware	:	
corporation,	:	Judge Clark Waddoups
	:	Magistrate Judge Samuel Alba
Defendant.	:	

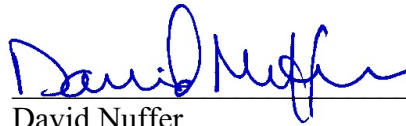
Based upon the parties' Stipulated Motion to Amend Scheduling Order (docket #110), the court GRANTS the motion and the following matters are set:

- A. All fact discovery shall be completed by August 31, 2010.
- B. The deadline for filing dispositive motions shall be September 30, 2010.

C. TRIAL AND PREPARATION FOR TRIAL:

- | | | | |
|----|--|-----------|--------------------|
| a. | Rule 26(a)(3) Pretrial Disclosures | | |
| | Plaintiff | | 01/07/11 |
| | Defendant | | 01/21/11 |
| b. | Special Attorney Conference on or before | | 02/04/11 |
| c. | Settlement Conference on or before | | 02/04/11 |
| d. | Final Pretrial Conference on | 2:30 p.m. | 02/21/11 |
| e. | Jury Trial | Two days | 8:30 a.m. 03/07/11 |

DATED this 4th day of May, 2010.



David Nuffer
U.S. District Magistrate Judge

APPROVED AS TO FORM:

JONES WALDO HOLBROOK & MCDONOUGH, PC

/s/ Mark D. Tolman (with permission)

Vincent C. Rampton

Mark D. Tolman

Attorneys for Plaintiff

United States District Court
for the District of Utah

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAY - 5 2010
BY D. MARK JOHNSON

Request and Order for Modifying Conditions of Supervision
With Consent of the Offender
(Waiver of hearing attached)

Name of Offender: **Tommy Jensen**

Docket Number: **2:06-CR-00023-001-DB**

Name of Sentencing Judicial Officer: **Honorable Dee Benson**
U.S. District Judge

Date of Original Sentence: **October 11, 2006**

Original Offense: **Activities Relating to Material Constituting or Containing Child
Pornography**

Original Sentence: **8 months Bureau of Prisons custody/36 months Supervised Release**

Type of Supervision: **Supervised Release** Supervision Began: **April 30, 2010**

PETITIONING THE COURT

☒ To modify the conditions of supervision as follows:

1. The defendant shall participate in the United States Probation and Pretrial Services Office Computer and Internet Monitoring Program under a copayment plan, and will comply with the provisions outlined in:

Appendix A, Limited Internet Access
(Computer and internet use, as approved)

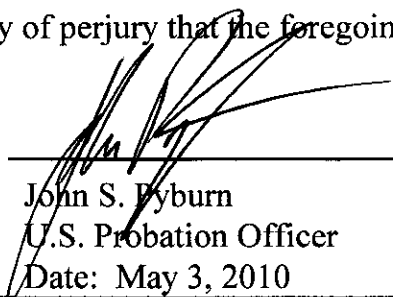
Furthermore; all computers, internet accessible devices, media storage devices, and digital media accessible to the defendant are subject to manual inspection/search, configuration, and the installation of monitoring software and/or hardware.

2. The defendant shall not view, access, or possess sexually explicit or pornographic materials in any format.

CAUSE

The defendant agrees by consent to the amending of his computer/internet condition to the current conditions utilized by the U.S. Probation Office.

I declare under penalty of perjury that the foregoing is true and correct



John S. Pyburn
U.S. Probation Officer
Date: May 3, 2010

THE COURT ORDERS:

- ☒ The modification of conditions as noted above
☐ No action
☐ Other



Honorable Dee Benson
U.S. District Judge

Date: 5-5-10

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
PROBATION AND PRETRIAL SERVICES OFFICE**

**WAIVER OF RIGHT TO HEARING PRIOR TO
MODIFICATION OF CONDITIONS OF SUPERVISION**

I have been advised by U.S. Probation Officer John S. Pyburn that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No. 2:06-CR-00023-001-DB. The modification would be:

1. The defendant shall participate in the United States Probation and Pretrial Services Office Computer and Internet Monitoring Program under a copayment plan, and will comply with the provisions outlined in:

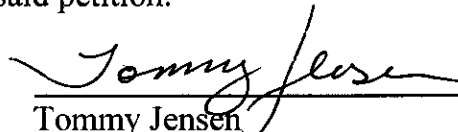
Appendix A, Limited Internet Access
(Computer and internet use, as approved)

Furthermore; all computers, internet accessible devices, media storage devices, and digital media accessible to the defendant are subject to manual inspection/search, configuration, and the installation of monitoring software and/or hardware.

2. The defendant shall not view, access, or possess sexually explicit or pornographic materials in any format.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

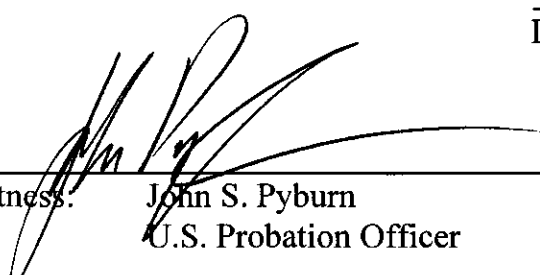
Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.


Tommy Jensen

Date

5/3/10

Witness:


John S. Pyburn
U.S. Probation Officer

61 — **SECRET**

JUDGE DALE A. KIMBALL *Clack*
United States District Court Judge

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

BRIGHAM YOUNG UNIVERSITY, a Utah
Non-Profit Education Institution; and DR.
DANIEL L. SIMMONS, an individual;

Plaintiffs,

v.

PFIZER, INC., a Delaware corporation; G.D.
SEARLE & COMPANY, a Delaware
corporation; G.D. SEARLE LLC, a Delaware
limited liability company; MONSANTO
COMPANY, a Delaware corporation; and
PHARMACIA CORPORATION, a Delaware
corporation,

Defendants.

**ORDER FOR PRO HAC VICE
ADMISSION OF BRAD D. BRIAN**

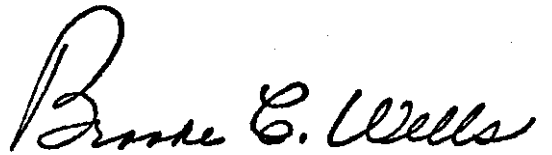
Case No. 2:06cv-890-BTS (BCW)

The Honorable Ted Stewart

Magistrate Judge Brooke C. Wells

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Brad D. Brian in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 5th day of May 2010.

A handwritten signature in black ink, reading "Brooke C. Wells", written over a horizontal line.

Magistrate Brooke Wells

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

BRIGHAM YOUNG UNIVERSITY, a Utah
Non-Profit Education Institution; and DR.
DANIEL L. SIMMONS, an individual;

Plaintiffs,

v.

PFIZER, INC., a Delaware corporation; G.D.
SEARLE & COMPANY, a Delaware
corporation; G.D. SEARLE LLC, a Delaware
limited liability company; MONSANTO
COMPANY, a Delaware corporation; and
PHARMACIA CORPORATION, a Delaware
corporation,

Defendants.

**ORDER FOR PRO HAC VICE
ADMISSION OF KRISTIN S.
ESCALANTE**

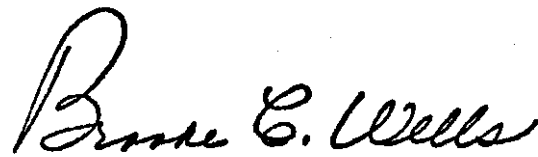
Case No. 2:06cv-890-BTS (BCW)

The Honorable Ted Stewart

Magistrate Judge Brooke C. Wells

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Kristin S. Escalante in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 5th day of May 2010.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first letter of "Brooke" is a large, stylized capital 'B'. The signature is positioned above a horizontal line.

Magistrate Brooke Wells

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

BRIGHAM YOUNG UNIVERSITY, a Utah
Non-Profit Education Institution; and DR.
DANIEL L. SIMMONS, an individual;

Plaintiffs,

v.

PFIZER, INC., a Delaware corporation; G.D.
SEARLE & COMPANY, a Delaware
corporation; G.D. SEARLE LLC, a Delaware
limited liability company; MONSANTO
COMPANY, a Delaware corporation; and
PHARMACIA CORPORATION, a Delaware
corporation,

Defendants.

**ORDER FOR PRO HAC VICE
ADMISSION OF STUART N.
SENATOR**

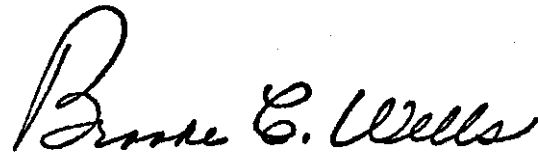
Case No. 2:06cv-890-TS (BCW)

The Honorable Ted Stewart

Magistrate Judge Brooke C. Wells

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Stuart N. Senator in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 5th day of May 2010.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is fluid and cursive, with the first name "Brooke" being more prominent and the last name "Wells" following in a similar style.

Magistrate Judge Brooke Wells

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BYRD ENTERPRISES OF ARIZONA, INC.,

Plaintiff,

vs.

DESERT SAGE CONTRACTORS, LLC, a
Utah limited liability company, BLAINE L.
WADMAN, individually, and GRANT
WADMAN, individually,

Defendants.

ORDER DISMISSING CASE

Case No. 2:07-CV-391

Judge Dee Benson

April 12, 2010, the Court issued an Order to Show Cause why this case should not be dismissed for failure to prosecute. Plaintiff was ordered to inform the Court of his intentions to proceed, if any, within fifteen days of the date the order was issued. Plaintiff has failed to respond to the Court's Order. Accordingly, the Court **DISMISSES** the case **WITHOUT PREJUDICE**.

Dated this 5th day of May, 2010.



Dee Benson
U.S. District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

KLEIN-BECKER USA, LLC, KLEIN-
BECKER IP HOLDINGS, LLC,

Plaintiffs,

vs.

COLLAGEN CORPORATION; DOCTORS
SKIN CARE INSTITUTE MEDICAL
CLINIC, INC; LESLIE FEINSTEIN aka L.
LOUISE BRODY aka LOUISE BRODY
FEINSTEIN aka LOUISE LESLIE
FEINSTEIN,

Defendants.

MEMORANDUM DECISION AND
ORDER DENYING MOTION FOR 28
U.S.C. § 2107(c) RELIEF OR IN THE
ALTERNATIVE TO SET ASIDE THE
JUDGMENT UNDER RULE 60(b)(1)

Case No. 2:07-CV-873 TS

This matter is before the Court on Defendants' Motion for 28 U.S.C. § 2107(c) relief or in the Alternative to Set Aside the Judgment under Rule 60(b)(1). For the reasons discussed below the Court will deny the Motion.

I. Background

Plaintiffs brought this cause of action in November 2007, alleging Defendants infringed

its trademarks and trade dress. After repeated failure on the part of Defendants to comply with discovery requests and Orders from the Court compelling disclosure, the Court imposed terminating sanctions against Defendants and granted default judgment in Plaintiffs' favor on October 22, 2008. In determining the issue of damages and scope of a permanent injunction the Court granted Defendants leave to appear telephonically at a June 4, 2009 status conference. Yet Defendants failed to appear. Based on discussions at that status conference, Plaintiffs filed a Motion for Final Judgment and an outline of damages on June 18, 2009. The Court granted that motion and entered final judgment against Defendants on July 20, 2009. On October 2, 2009, the judgment was amended to include all of Defendant Feinstein's aliases in order for Plaintiffs to effectuate their recovery. Plaintiffs filed a Second Motion to Amend/Correct the Judgment on October 7, 2009, to include the legal fees Plaintiffs incurred in trying to collect their judgment. This motion was effectively granted through the Clerk's entry of an amended judgment on October 15, 2009.

II. Discussion

Defendants asks the Court for relief under 28 U.S.C. § 2107(c) or for the judgment to be set aside. 28 U.S.C. § 2107(c) states

The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—

(1) that a party entitled to notice of the entry of judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

(2) that no party would be prejudiced, the district court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is

earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

Defendants first make an argument about the statutory construction of the statute and the necessary meaning of the thirty (30) and 180-day provisions. Defendants argue that the thirty-day filing requirement is inapplicable because there was no notice of the entry of judgment, Plaintiffs would not be prejudiced and because this Motion was originally filed on January 19, 2010, and third, not more than 180 days had elapsed since the entry of the initial judgment was entered on July 20, 2009.

The Court is not persuaded by Defendants' averments. First, the Court finds that 183 days have passed between the filing of the original judgment July 20, 2009 and the filing of this Motion on January 19, 2010. Second, Defendants have not shown excusable neglect or good cause. Throughout this litigation, Defendants have been unwilling participants. In fact, their unwillingness to participate was so grave that it led to a final, default judgment against them. Throughout the proceedings, the Court gave Defendants numerous chances to follow its orders and engage in this process. Defendants refused every step of the way. Defendants try to blame their failures on their attorneys and accuse them of failing to advise them of and protect their rights. Defendant Feinstein swears by affidavit that in at least one instance she provided discovery answers by phone to her attorney who "failed" to file the pleadings. She also alleges that her failure to appeal was due to her mis-belief that the case was settled.

Case law surrounding 28 U.S.C. § 2107 does not generally state or discuss situations constituting excusable neglect. However, case law interpreting Rule 60(b) has done so. In

Pioneer Investment Services Co. v. Brunswick Associates Ltd.,¹ cited by Defendants, the moving party acted in good faith and there was no danger of prejudice to the non-movant. As already discussed numerous times, Defendants have not acted in good faith from the inception of this action. Instead, they have continually failed to stay informed, participate, respond to Court orders, and appear at critical proceedings. Additionally, as discussed further below, the Court finds Plaintiffs would suffer prejudice if the time to appeal was reopened.

Moreover, the movants in the two other cases cited by Defendants, *Rogers v. Watt*² and *Wallace v. Mcmanus*,³ had no notice at all, actual or otherwise, of the judgments against them. Defendants have had notice, even if they have chosen to ignore it. Additionally, both cases recognized that the clerk's failure to serve notice pursuant to Rule 77(d) alone is not enough to constitute excusable neglect.⁴ Defendants also argue they have had difficulty retaining counsel. This proposition contravenes their actions as they have retained at least six different counsel between this action and the related action pending in Ohio.

Defendants can not use their attorneys as a basis for excusable neglect.⁵ Even if they were able to use their attorney's malpractice or neglect as a basis for excusable neglect, Defendants point to only one instance where their attorney allegedly failed to file a pleading after

¹507 U.S. 380 (1993).

²722 F.2d 456 (9th Cir. 1983).

³776 F.2d 915 (10th Cir. 1985).

⁴See *Rogers*, 722 F.2d at 457; *Wallace*, 776 F.2d at 917.

⁵*Pelican Production Corp. v. Marino*, 893 F.2d 1143, 1146 (10th Cir. 1990) (“Carelessness by a litigant or his counsel does not afford a basis for relief under Rule 60(b)(1)”).

Defendant Feinstein gave him a response over the phone. However, as pointed out by Plaintiffs, the Court did not enter default and a final judgment against Defendants based on one failure to respond. As already stated numerous times, Defendants failed over and over to participate, respond and show-up throughout this litigation. Defendants also blame their attorney for giving them the wrong information about their time to appeal. Yet this admission or argument itself points to the fact that they were aware of, and had notice of, the judgments.

In addition to the evidence of Defendants' notice already discussed, Plaintiffs argue that Defendants were both aware of the judgment and that their attorneys were in communication with Plaintiffs trying to negotiate a settlement. Plaintiffs point out that Defendants do not assert that they never received notice that judgment had been entered, but that they "never received Notice of Entry of Judgment from the Clerk of the Court or from any party."⁶ Regardless, the Court finds that Defendants received notice that judgment had been entered against them.⁷ Plaintiffs also argue that since the entry of judgment either Defendants or their attorneys have engaged in numerous conversations with Plaintiffs' counsel regarding the judgment.⁸ The Court will not allow the disengaged Defendants to now use their shenanigans to their benefit. Plaintiffs also argue that Defendants hired other counsel in Ohio to represent them in the enforcement action filed by Plaintiffs to enforce the judgment "she knew nothing about."

The Court also finds that Plaintiffs will be prejudiced if the time for appeal is reopened

⁶Affidavit of Leslie Feinstein, Docket No. 58.

⁷See Memorandum in Opposition, Docket No. 61 at 19.

⁸*Id.* at 21.

because of the considerable amounts of time and money they have already spent in trying to collect on the judgment.

Based on Defendants' repeated pattern of refusing to participate and follow Court orders and the prejudice granting this motion would inflict on Plaintiffs, the Court declines to use its authority to reopen the time for appeal.

In the alternative, Defendants argue the judgment should be set aside according to Rule 60(b). That Rule states in part: "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertance, surprise, or excusable neglect."⁹ As already stated, the Court finds no excusable neglect present. Because none of the other circumstances under which the Court could grant such relief are present either, the Court finds relief under Rule 60(b) is inappropriate.

III. Conclusion

For the reasons stated above, Defendants' Motion for 28 U.S.C. § 2107(c) Relief or in the Alternative to Set Aside the Judgment under Rule 60(b) (Docket No. 57) is DENIED.

DATED May 5, 2010.

BY THE COURT:



TED STEWART
United States District Judge

⁹FED. R. CIV. P. 60(b).

United States Probation Office
for the District of Utah

RECEIVED

Report on Offender Under Supervision MAY - 3 2010

Name of Offender: **David Lynn Stevenson**

Docket Number: **JUDGE TENA CAMPBELL 208 CP 00751 001-TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell**
Chief U.S. District Judge

Date of Original Sentence: **February 16, 2010**

Original Offense: **False Claims Against the United States [18 U.S.C. § 287]**

Original Sentence: **36 Months Probation**

Type of Supervision: **Probation**

Supervision Began: **February 16, 2010**

SUPERVISION SUMMARY

On February 16, 2010, the above-named offender was sentenced to a 36-month term of probation for the offense of False Claims Against the United States. The Physical Condition section of the presentence report outlines a number of medical problems experienced by the offender. Since the time of sentencing, his physical condition has worsened, due to the fact that he has been stricken by a neurological disorder. What was initially thought to be Bell's Palsy (a dysfunction of a facial nerve that results in the inability to control facial muscles on the affected side), is now reportedly in need of additional testing and diagnoses to determine the cause of the disorder. This condition has affected the defendant's vision and speech, as well as limited his mobility. In addition, the cost of medical care and prescribed medications has greatly impacted his limited monthly finances.

The United States Probation Office (USPO) respectfully recommends that the restitution payment of \$250.00 per month be modified to permit the USPO to establish a payment agreement with the offender, and the monthly payment amount be based upon his ability to pay.

By way of information, the USPO is not currently requiring the offender to complete community services hours on a monthly basis, due to his medical condition. Once his health improves to the point that he is physically capable to complete community service, he will be required to do so.

If the Court desires more information or another course of action, please contact me at 801-625-5680 extension 1056.

I declare under penalty of perjury that the foregoing is true and correct.



Zachary C. McBride
U.S. Probation Officer
Date: April 29, 2010

THE COURT:

- ☒ Approves the request noted above
☐ Denies the request noted above
☐ Other

Tena Campbell

Honorable Tena Campbell
Chief U.S. District Judge

Date: 5-4-2010

Bart M. Botta (CA SBN 167051)
RYNN & JANOWSKY, LLP
4100 Newport Place Drive, Suite 700
Newport Beach, CA 92660
Telephone: (949) 752-2911
Facsimile: (949) 752-0953
E-mail: bart@rjlaw.com

Attorneys for Plaintiff
E J'S PRODUCE SALES, INC.

SO ORDERED

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
DALE A. KIMBALL
United States District Judge

Date MAY - 5 2010 May 3, 2010

D. MARK JONES, CLERK
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

E J'S PRODUCE SALES, INC., a
corporation,

Plaintiff,

v.

SOUTHWEST FRESH PRODUCE,
INC., a corporation; DIXIE FRESH
PRODUCE, INC., a corporation;
JONATHAN WRIGHT, an individual;
ROY COOK, individually and d/b/a
VIOR'S ITALIAN BAKERY, d/b/a
VIOR'S BAKERY AND DELI, d/b/a
VIOR'S ITALIAN BAKERY AND
DELI,

Defendants.

**NOTICE OF VOLUNTARY
DISMISSAL OF CASE IN ITS
ENTIRETY**

[FRCP Rule 41(a)(1)]

Case No. 2:08-CV-506 DK

Plaintiff E J'S PRODUCE SALES, INC., a corporation, hereby voluntarily dismisses the above-captioned Complaint in its entirety as to all Defendants, without prejudice, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

///

///

///

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was served electronically to all parties on the above captioned matter at the electronic address as disclosed with the Court, or by depositing same in the U.S. Mail, postage pre-paid and properly addressed on this day, April 30, 2010.

RYNN & JANOWSKY, LLP

By: /s/ Bart M. Botta
BART M. BOTTA
bart@rjlaw.com
California State Bar No. 167051
RYNN & JANOWSKY, LLP
4100 Newport Place Drive, Suite 700
Newport Beach, California 92660
Telephone: (949) 752-2911
Facsimile: (949) 752-0953

Attorneys Admitted *Pro Hac Vice* for
Plaintiff

FILED
U.S. DISTRICT COURT

2010 MAY -5 A 10:18

DISTRICT OF UTAH

BY: EMILY S. GLEN

PETER STIRBA (Bar No. 3118)
NATHAN A. CRANE (Bar No. 10165)
STIRBA & ASSOCIATES
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, Utah 84110-0810
Telephone: (801) 364-8300
Facsimile: (801) 364-8355
E-mail: ncrane@stirba.com

Attorneys for Defendant Jake Parry

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

<p>ROBYN BAILEY,</p> <p>Plaintiff,</p> <p>vs.</p> <p>BLUFFDALE CITY, and JAKE W. PARRY,</p> <p>an individual,</p> <p>Defendants.</p>	<p>ORDER GRANTING MOTION TO CONTINUE TRIAL</p> <p>Case No. 2:08CV00560</p> <p>Judge David Sam</p>
--	--

Defendant Jake Parry's Motion To Continue Trial having come before the Court without objection and for reasons set forth therein, and good cause showing it is hereby

ORDERED, that the trial date of June 22, 2010 is vacated.

It is further ORDERED, that the trial date be set for the 11th day of January,
2011. 8:30 a.m.

The Final pretrial Dec. 16, 2010 @ 2:00 pm.

Order Granting Motion to
Continue Trial 2:08CV560

DATED this 4th day of May, 2010.

BY THE COURT



THE HONORABLE DAVID SAM

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2010, a true copy of the foregoing **ORDER GRANTING MOTION TO CONTINUE TRIAL** was served by the method indicated below, to the following:

Roger J. McConkie
James W. McConkie
James C. Bergstedt
Prince, Yeates & Geldzahler
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
801-524-1000
Attorneys for the Plaintiff

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ Electronic Filing

Steven W. Allred
1007 N. Bonneville Drive.
Salt Lake City, Utah 84103

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ Electronic Filing

/s/ Zachary B. Hoddy

Legal Assistant

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>ACLYS INTERNATIONAL, LLC, a Utah Limited Liability Corporation,</p> <p style="text-align:right">Plaintiff,</p> <p style="text-align:center">vs.</p> <p>EQUIFAX, INC., a Georgia Corporation,</p> <p style="text-align:right">Defendant.</p>	<p>MEMORANDUM DECISION and ORDER</p> <p>Case No. 2:08-cv-00954</p>
--	--

Aclys International, LLC, (Aclys) brought negligence and negligent misrepresentation claims against Equifax, Inc. (Equifax), a credit reporting agency, because of omissions on a credit report. Equifax moves to dismiss, arguing that Aclys's claim is barred by the economic loss rule. The court agrees and GRANTS Equifax's motion for judgment on the pleadings.

BACKGROUND

In November 2005, Aclys employed First Credit Corporation (First Credit) to investigate some potential business partners, including Amro Bocelli. As part of its background check, First Credit obtained a credit report from Equifax on Mr. Bocelli. The credit report showed that Mr. Bocelli's only delinquent payments were a few old medical collections. In part because of Equifax's credit report, Aclys provided Mr. Amro, his business partner, and related entities with over five million dollars in purchase-order financing. After Mr. Bocelli defaulted on the loans

and absconded, Aclys discovered that Mr. Bocelli had a \$236,047.67 default judgment against him in the State of Wisconsin and a \$157,840.22 judgment against him in California for contract fraud, both entered in 2003. Aclys has obtained default judgments in state court against Mr. Bocelli and First Credit, but has been unable to collect. It now brings suit against Equifax. Aclys argues that Equifax did not exercise reasonable care in preparing the credit report that it provided to First Credit Corporation.

ANALYSIS

Equifax moves for judgment on the pleadings, arguing that Aclys' claims are barred by the economic loss rule. Aclys contends that the economic loss rule does not bar negligent misrepresentation claims. Aclys further argues that the economic loss rule is not applicable to this case because there is no contract between Aclys and Equifax, Equifax has a common-law duty to provide accurate information, and Equifax had an independent duty under the Fair Credit Reporting Act. Finally, Aclys claims that it did not suffer an economic loss so the economic loss rule does not bar recovery.

Motion for Judgment on the Pleadings Standard

“After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). In order to survive a motion for judgment on the pleadings, “a complaint must include enough facts to state a claim to relief that is plausible on its face.” Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219, 1223 (10th Cir. 2009) (internal quotations omitted). The court will only grant a motion for judgment on the pleadings “when it appears that the plaintiff can prove no set of facts in support of the claims that would

entitle the plaintiff for relief.” Fernandez v. Mora San Mugyek Elec. Coop., 462 F.3d 1244, 1250 (10th Cir. 2006).

The Economic Loss Rule

“The economic loss rule prevents a party from claiming economic damages ‘in negligence absent physical property damage or bodily injury.’” Fennell v. Green, 2003 UT App 291, ¶ 13, 77 P.3d 339 (quoting SME Idus., Inc. v. Thompson, Ventulett, Stainback & Assocs., 2001 UT 54, ¶ 32, 28 P.3d 669); see also Davencourt at Pilgrims Landing Homeowners Association v. Davencourt at Pilgrims Landing, LC, 2009 UT 65, ¶ 18. Economic loss includes “consequential loss of profits without any claim of personal injury or damage to other property.” SME Idus., 2001 UT 54, ¶ 32. “In essence, the economic loss rule marks the fundamental boundary between contract law, which protects expectancy interests created through agreement between the parties, and tort law, which protects individuals and their property from physical harm by imposing a duty of reasonable care.” Sunridge Dev. Corp. v. RB&G Eng'g, Inc., 2010 UT 6, ¶ 28 (Utah 2010) (quotations omitted).

When a dispute arises because a purchased product does not meet expectations “the claim pertains to the quality of the product as measured by the buyer's and user's expectations—expectations which emanate solely from the purchase transaction.” American Towers Owners Ass'n v. CCI Mech., 930 P.2d 1182, 1192 (Utah 1996). The economic loss rule applies regardless of whether the purchaser has a direct contractual relationship with the creator of the product. The purpose for the economic loss rule is “to prevent the imposition of ‘economic expectations’ on non-contracting parties.” SME Indus., 2001 UT 54, ¶ 32.

While the purpose of the economic loss rule is to prevent contracting parties from receiving more than the benefit of their bargain, “cases from the Utah Supreme Court have also applied the economic loss rule to parties who were not parties to a contract.” Hafen v. Strebeck, 338 F.Supp. 2d 1257, 1266 (D. Utah 2004). In Hafen, the parties never reached an agreement so no contractual duties arose. Id. at 1267. The court held that the economic loss rule barred the plaintiffs’ claim for negligent misrepresentation because commercial entities negotiating a contract owe one another only a duty of honesty, and so no independent duty of care arose. Id. at 1265-1267.

Negligent Misrepresentation and the Economic Loss Rule

“[A] party injured by reasonable reliance upon a second party’s careless or negligent misrepresentation of a material fact may recover damages resulting from that injury when the second party had a pecuniary interest in the transaction, was in a superior position to know the material facts, and should have reasonably foreseen that the injured party was likely to rely upon the fact.” Price-Orem Investment Co. v. Rollins, Brown and Gunnell, Inc., 713 P.2d 55, 59 (Utah 1986) (allowing claim of negligent misrepresentation by builder against surveyor even though there was no privity of contract). Section 552 of the Restatement, Second, Torts specifies that an individual can be liable for negligent misrepresentation for “suppl[ying] false information for the guidance of others in their business transactions.” But in the case of a purely economic loss, “the courts have found it necessary to adopt a more restricted rule of liability, because of the extent to which misinformation may be, and may be expected to be, circulated, and the magnitude of the losses which may follow from reliance upon it.” Restatement (Second) Torts § 552 cmt. a.

Negligent misrepresentation liability is limited “to cases in which [the supplier of information] manifests an intent to supply the information for the sort of use in which the plaintiff’s loss occurs.” Id.

The Utah Supreme Court has not ruled on whether the economic loss rule applies to claims for negligent misrepresentation. See Smith v. Frandsen, 2004 UT 55, ¶ 13 n.2, 94 P.3d 919. But it appears that negligent misrepresentation falls outside the economic loss rule only when the party making the misrepresentation owes an independent duty of care. Grynberg v. Questar Pipeline Co., 2003 UT 8, P51 (Utah 2003) (holding that “the economic loss rule does not bar tort claims when those tort claims are based on a duty independent of those found in the contract”); see also Anapoell v. Am. Express Bus. Fin. Corp., No. 2:07-cv-198, 2007 U.S. Dist. LEXIS 88182 at * 22 (November 30, 2007). The Utah Supreme Court has found an independent duty of care for surveyors, real estate agents but not for developers of real estate or design professionals. Davencourt, 2009 UT 64, ¶ 29 (no independent duty for developers); Yazd v. Woodside Homes Corp., 2006 UT 47, ¶ 35, 143 P.3d 283 (independent duty of care for contractor-seller to disclose information about property); SME Indus., 2001 UT 54, ¶ 37 (no independent duty for design professionals); Hermansen v. Tasulis, 2002 UT 52, ¶ 23, 48 P.3d 235 (independent duty for real estate agents to disclose “known material defects”); Price-Orem, 713 P.2d at 59 (independent duty for surveyors to those who will foreseeably rely on their work).

In determining whether a particular type of professional owes an independent duty, Utah courts consider whether the professional is licensed under a statute that creates such a duty, whether the professional has a direct relationship with the party who relies on the negligent

misrepresentation, and whether “the plaintiffs could have avoided their economic loss with contracts.” West v. Inter-Financial, Inc., 2006 UT App 222, ¶¶ 18-27, 139 P.3d 1059.

Regardless of whether an independent duty exists, a claim for negligent misrepresentation can only arise if the information providers “are aware that third parties may reasonably rely on their work.” Id. ¶ 27.

Aclys’ Economic Loss

Aclys suffered an economic loss. The Utah Supreme Court has repeatedly stated that economic loss includes “damages for inadequate value, costs of repair and replacement of the defective product, or consequential loss of profits—without any claim of personal injury or damage to other property . . . as well as the diminution in the value of the product because it is inferior in quality and does not work for the general purposes for which it was manufactured and sold.” See, e.g., SME Idus., 2001 UT 54, ¶ 32. Because Aclys seeks damages for purely economic losses sustained as a consequence of relying on the Equifax credit report, its loss falls squarely within the economic loss rule. Accordingly, Aclys may only assert a claim for negligent misrepresentation if it can establish that Equifax owed it an independent duty of care. Aclys alleges that Equifax has both a common-law duty and a statutory duty imposed by the Fair Credit Reporting Act (FCRA) to provide thorough and accurate credit reports.

Equifax’s Duty to Aclys under FCRA

FCRA does not impose any duty on Equifax relevant to this case. Congress enacted FCRA “to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner

which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information” 15 U.S.C. § 1681(b) (emphasis added). Aclys obtained a consumer credit report on Mr. Bocelli for the purpose of extending millions of dollars of purchase order financing, not consumer financing. Moreover, FCRA was enacted to protect consumers from credit reporting agencies that disseminated inaccurate credit information about them, not businesses such as Aclys that use credit reports to make decisions about whether to issue credit.

Even if FCRA were applicable to the parties in this case, FCRA does not require credit reporting agencies to include all relevant information about an individual, only that the information present on a credit report be accurate. Davis v. Equifax Info. Servs LLC, 346 F.Supp. 2d 1164, 1172. In this case, Aclys has made no allegation that the information included on Mr. Bocelli’s Equifax credit report is incorrect. Rather, they claim only that some information was omitted. Equifax’s statutory duty to report information does not extend to including all available credit information on an individual. Further, Equifax’s statutory duty is not of the same kind imposed by the licensing statutes for real estate appraisers and real estate agents because it does not impose on Equifax a duty of care toward credit report purchasers or a duty of care to include all available credit information on a consumer.

Equifax’s Common Law Duty to Aclys

For Equifax to have a duty of care toward Aclys and therefore incur liability for negligent misrepresentation, Aclys’ loss must have been foreseeable by Equifax when it issued the credit report on Mr. Bocelli to First Credit.

A user of commercial information cannot reasonably expect its maker to have undertaken to satisfy [the duty of care] unless the terms of the obligation were known to him. Rather, one who relies upon the information in connection with a commercial transaction may reasonably expect to hold the maker to a duty of care only in circumstances in which the maker was manifestly aware of the use to which the information was to be put and intended to supply it for that purpose.

Restatement (Second) Torts § 552 cmt. a. The question of whether an individual owes a duty of care is a legal issue. Normandeau v. Hanson Equipment, Inc., 2009 UT 44 ¶ 18, 215 P.3d 152.

“A court determines whether a duty exists by analyzing the legal relationship between the parties, the foreseeability of the injury, the likelihood of injury, public policy as to which party can best bear the loss occasioned by the injury, and other general policy considerations.” *Id.* ¶ 19. If an information provider does not owe the recipient of the information a duty of care, the information provider also does not have the independent duty of care required to save the claim from invalidity under the economic loss rule. Hafen v. Strebeck, 338 F.Supp. 2d at 1266. Even if a duty of care exists, the economic loss rule may still bar the claim if recovery allows a stranger to a contract to receive more than the contract provides to the contracting parties. See SME Indus., 2001 UT 54, ¶ 32.

Equifax did not have a direct relationship with Aclys and therefore Equifax did not make direct representations about the scope of the credit report to Aclys. Equifax was not manifestly aware that Aclys would rely on the credit report to lend over five million dollars in non-consumer credit, and did not intend to supply the credit report for that purpose. Moreover, public policy weighs against finding that Equifax owed Aclys a duty of care. Imposing a duty of care on Equifax to provide thorough information to business owners would be tantamount to making Equifax the insurer of bad debts whenever there is an omission on a credit report. For those

reasons, the court concludes that Equifax did not owe a duty of care to Aclys.

Further, even if Equifax did have a duty of care, Aclys' claim is still barred by the economic loss doctrine because Equifax had no duty independent of the contract between Equifax and First Credit. Equifax made direct representations only to First Credit, not to Aclys. A contract governed the relationship between Equifax and First Credit.¹ If the contract between Equifax and First Credit specified that no judgments would be omitted it would be First Credit, not Aclys, that would have a cause of action against Equifax under the contract. On the other hand, if the contract specified that not all judgments against Mr. Bocelli were necessarily present on the credit report, the court should not impose on Equifax a higher duty of care toward Aclys than was present in the contract that governed Equifax's duties to First Credit. Indeed, the purpose of the economic loss doctrine is to avoid imposing the economic expectations of strangers to the contract, like Aclys, on contracting parties. Therefore, the economic loss doctrine bars Aclys' claim against Equifax.

CONCLUSION

The court GRANTS Equifax's motion for judgment on the pleadings (Docket No. 23) because Equifax owed Aclys no duty of care and, in any event, Aclys' claim is barred by the economic loss doctrine.

¹The court has not seen the contract between First Credit and Equifax, but during oral argument on this matter, counsel for Aclys asserted that such a contract exists.

DATED this 5 day of May, 2010.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
Chief Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

1-800 CONTACTS, INC.,

Plaintiff,

vs.

MEMORIAL EYE, P.A. d/b/a
SHIPMYCONTACTS.COM, SHIP-MY-
CONTACTS.COM, and IWANT
CONTACTS.COM, a Texas Professional
Association,

Defendants.

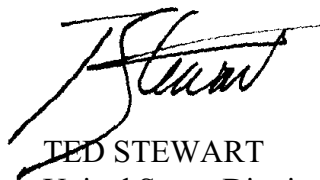
ORDER OF REFERENCE

Civil No. 2:08-CV-983 TS

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this Court, the above entitled case is referred to Magistrate Judge Alba. The magistrate judge is directed to hear and determine any nondispositive pretrial matters pending before the Court.

DATED this 5th day of May, 2010.

BY THE COURT:



TED STEWART
United States District Judge

ROBERT B. SYKES (#3180)

bob@sykesinjurylaw.com

ALYSON E. CARTER (#9886)

alyson@sykesinjurylaw.com

SCOTT R. EDGAR (#11562)

scott@sykesinjurylaw.com

ROBERT B. SYKES & ASSOCIATES, P.C.

311 South State Street, Suite 240

Salt Lake City, Utah 84111

Telephone (801) 533-0222

Facsimile (801) 533-8081

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SHERIDA FELDERS, et al.,	)	ORDER
)	
Plaintiffs,)	
)	
vs.	)	Civil No. 2:08-cv-993
)	
BRIAN BAIRETT, et al.,	)	District Judge Clark Waddoups
)	
Defendants.	)	Magistrate Judge Paul M. Warner
)	

Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, and based on the Stipulated Motion filed by the Parties,

IT IS HEREBY ORDERED:

1. Plaintiffs' Motion for Leave to Amend Complaint (Doc. 52) has been rendered **MOOT**, and their First Amended Complaint and Jury Demand (Doc. 57) is deemed withdrawn.

2. The parties' Stipulated Motion for Leave to Amend Complaint (Doc. 66) is **GRANTED**.

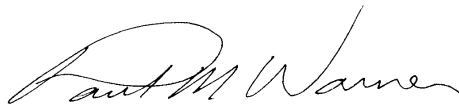
3. Plaintiffs shall file their Second Amended Complaint within fourteen (14) days of the date of this order.

4. Defendant Brian Bairett shall have thirty (30) days from the date Plaintiffs file their Second Amended Complaint to file his Answer or otherwise respond to Plaintiffs' Second Amended Complaint.

IT IS SO ORDERED.

DATED this 5th day of May, 2010.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", is written over a horizontal line.

PAUL M. WARNER
U.S. Magistrate Judge

Rebecca H. Skordas (#6409)
SKORDAS, CASTON & HYDE, LLC
341 So. Main Street, Suite 303
Salt Lake City, UT 84111
Telephone: (801) 531-7444
Facsimile: (801) 531-8885
Attorney for Defendant

FILED
U.S. DISTRICT COURT

2010 MAY -5 A 10:19

DISTRICT OF UTAH

BY: DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHAMNAP IN,

Defendant.

ORDER TO CONTINUE

Case No. 2:09-CR-00070

Judge David Sam

Based upon the motion of the Defendant to continue the trial date in this matter, for good cause appearing, and the Court hereby finds the following facts:

1. The Defendant was charged in the Third Judicial District Court for Salt Lake County, State of Utah on January 7, 2009 with Possession of a Dangerous Weapon by a Restricted Person, and multiple counts of Felony Discharge of a Firearm, stemming from the same set of facts for which he is currently indicted.

2. On November 16, 2009, Mr. In plead guilty to Possession of a Firearm by a Restricted Person, and three (3) counts of Discharge of a Firearm. The Statement of Defendant in Support of Guilty Plea contains a description of the elements of the offense and Statement of the Facts and is signed by Mr. In.

3. On April 25, 2010, defense counsel obtained a recording of Mr. In's Change of Plea hearing in the state court proceedings. A review of the tape revealed that Mr. In had entered into an Alford Plea.

4. An evidentiary issue has arisen as to whether and to what extent Mr. In's statements in connection with the state prosecution can be used against him at trial.

5. The legal issue presented here appears to be a novel one. Though not technically dispositive, the court's ruling will certainly affect Mr. In's decision to proceed to trial.

6. Both sides need additional time to obtain the full state court records.

7. The ends of justice served by continuing the trial outweigh the best interests of the public and the defendant in a speedy trial. The defendant cannot adequately assess his risks at trial without knowing whether his statements made in the state court proceeding can be and will be used against him at trial. The government should not be required to incur the time and expense to prepare for trial when the outcome of this issue will likely resolve the matter. As indicated previously, the question of whether statements made in a state court proceeding under an Alford Plea can be used in a subsequent federal trial based on the same conduct is a novel issue of law.

8. The government, by and through counsel, Drew Yeates, stipulates to a continuance in this matter.

IT IS HEREBY ORDERED:


1. For the reasons stated in the Defendant's motion and the findings above, the Court finds that the ends of justice served by granting the requested continuance outweigh the best

interest of the public and the Defendant in a speedy trial and therefore, the time is excluded from the computation of time required under the Speedy Trial Act, pursuant to 18 U.S.C. § 3161(h)(7)(A).

2. The trial currently set for May 5, 2010 at 8:30 a.m., is continued to the 7th of July 2010, at 8:30 am/pm.

ENTERED this 2nd day of May, 20 .

BY THE COURT:



Honorable David Sam
United States District Court

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 2010, I filed a true and correct copy of the foregoing **ORDER TO CONTINUE**, with the Clerk of the Court using CM/ECF system, which sent notification of such filing to the following:

J. Drew Yeates- drew.yeates@usdoj.gov
Carlie Christensen – carlie.christensen@usdoj.gov

/s/Don Berrett
Skordas, Caston & Hyde, LLC

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,)	Case No. 2:09CR460 DS
)	
Plaintiff,	)	MEMORANDUM OPINION AND
	)	ORDER ADDRESSING DEFENDANTS'
	)	MOTION TO SUPPRESS
vs.)	
)	
LESTER HEMMERT MOWER,)	
EVA JEANETTE MOWER,)	
ADRIAN ANGUS WILSON, and)	
NATHAN WHITNEY DRAGE,)	
)	
Defendants.)	

Defendant Adrian Wilson filed a motion to suppress evidence obtained in a search of the premises located at 9672 South 700 East. Defendant Lester Mower joined in this motion to suppress. In their motion, Defendants assert that the Government conducted a warrantless search and seizure and that all evidence obtained as a result of the search should be suppressed. Because of the sworn affidavits and hearing transcripts available on this issue, the Court finds that an additional evidentiary hearing is not necessary to make its ruling.

I. RELEVANT FACTS

On March 17, 2009, agents from the Internal Revenue Service and the U.S. Small Business Administration served a search warrant at D&D Financial Service, Inc. (D&D), a company owned by Mr. Downward, located at 9672 South 700 East, Suite 201, Sandy, Utah

84091. The search warrant was for a criminal investigation involving Mr. Downward and was unrelated to Adrian Wilson or Lester Mower. During service of the warrant, IRS Agent Curtis noticed several boxes of documents belonging to Wilson and explained to Mr. Downward that a grand jury subpoena was going to be issued to him for the Wilson records. Mr. Downward left his office on the day of the search around 2:15 p.m.. Agent Curtis advised Downward that he could continue to remain at his office, but that he was free to go if he wished. Curtis also advised Mr. Downward that if he chose to leave the office, he would not be allowed to return until after the search was completed.

After Mr. Downward left his office, he called defendant Wilson's attorney, Peter Stirba, and left him a message. Downward also called another attorney to obtain legal advice about the search warrant, but learned he had a conflict with one of Mr. Downward's clients. Downward did not contact an attorney to obtain personal legal advice about the subpoena, and he never got in touch with Stirba.

At approximately 6:45 p.m. that evening, Agents Curtis and James went to Mr. Downward's home in Sandy, Utah to attempt to serve the subpoena. Mr. Downward was not home. Agent Curtis reached Mr. Downward by telephone later that evening and indicated to Downward that he had a grand jury subpoena for the documents belonging to Wilson. The call came sometime between 7:30 p.m. and 8:00 p.m. and they arranged to meet at a 7-Eleven next door to Mr. Downward's location. At the 7-Eleven, Curtis served Downward with the grand jury subpoena commanding the production of all documents pertaining to Adrian Wilson, Lester Mower, and Nathan Drage.

Agent Curtis indicated that he could take possession of the requested documents on the

same night that he served the subpoena. There was some discussion as to whether the documents could be given to the agents that night and whether Mr. Downward needed to appear on the return date of March 25, 2009 reflected on the subpoena. Curtis told Downward that the agents could take the records that night as a convenience to Downward and the agents, or Downward could mail them himself, although that would be expensive and hard to do.

Curtis explained that in addition to the ten boxes of Wilson records Mr. Downward had identified earlier in his office bathroom, another box of Wilson records had been located in a front office, in addition to two folders containing Wilson records which had been located on the floor of Mr. Downward's personal office. Curtis told Mr. Downward that these additional records were also covered by the subpoena and Curtis confirmed that one of the two folders contained some documents bearing Nathan Drage's name. The agents then went to D&D Financial alone and obtained the approximately eleven boxes of documents which had been identified earlier pertaining to Wilson, Mower and Drage.

II. ANALYSIS

Mr. Wilson argues that the Government unlawfully conducted a warrantless search and seizure in violation of the Fourth Amendment of the United States Constitution and that all evidence obtained as a result of the search should be suppressed. In support of his argument, Wilson states that the federal agents in this case unlawfully converted the subpoena into a search and seizure warrant through coercion. Courts have stated that a "subpoena duces tecum may not be used in such a way as to impinge upon Fourth Amendment rights." United States v. Re, 313 F. Supp. 442, 447-448 (S.D.N.Y. 1970)(citing Boyd v. United States, 116 U.S. 616 (1886), Hale v. Henkel, 201 U.S. 43 (1886), and other lower court decisions). However, in this case, nothing

in the record is indicative of an unlawful search or seizure taking place.

Mr. Downward had several hours' notice that a grand jury subpoena would be forthcoming. He had ample opportunity to contact an attorney should he so choose. Additionally, when the subpoena was served on Mr. Downward, the questions that arose in his discussion with the agents centered around issues of convenience of delivering the records and whether his personal appearance was demanded by the subpoena. The records were not obtained that night in response to a coercive interaction, rather the record indicates that Mr. Downward allowed the agents to take the boxes of records at that time as a convenience to himself and to the agents. The agents apprised Mr. Downward of his options with respect to compliance with the subpoena. The record reflects that at no time did the agents threaten or coerce Mr. Downward into producing the Wilson records immediately.

Further, Mr. Downward had already gathered and boxed the Wilson records prior to the subpoena being served. The agents did not conduct a search themselves, or choose to seize the documents. Agent Curtis explained to Mr. Downward that in addition to the ten boxes of Wilson records Mr. Downward had identified earlier, another box of records had been located pertaining to Wilson in addition to two folders that were all covered under the subpoena. Curtis identified those records to Downward who did not object to the transfer or request a review of the records before agreeing to produce them. Mr. Downward did not ask to return to his office, nor did he express concern with the logistics of the agents taking the records from the office; only that he was in compliance with the subpoena.

The government served Mr. Downward with a grand jury subpoena and therefore

proceeded under process of law.¹ Mr. Downward complied with the subpoena voluntarily and not under any threats of coercion. The agents did not attempt to deliberately mislead Mr. Downward into thinking that his only choice was to provide the documents that night. He was given the choice of shipping the boxes himself, or letting the agents take the documents with them. Mr. Downward voluntarily chose the latter. Accordingly the subpoena was not converted into an unlawful search and seizure.²

III. CONCLUSION

Having reviewed the motion and the government's response, the Court denies the defendants' motion. Consequently, the defendants' Motion to Suppress Evidence Obtained in the Search of the Premises Located at 9672 South 700 East, Suite 201 is DENIED.

DATED this 27th day of April, 2010.

BY THE COURT:



DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT

¹ Wilson argues that Mr. Downward was not authorized to release Mr. Wilson's documents to the government. However, because the government proceeded under process of law by serving Mr. Downward with a grand jury subpoena, this point is moot.

² Wilson also argues that the subpoena was invalid as the records were obtained when the grand jury was not in session to receive them. However, because this Court has determined that the government did not demand production of the records the night the subpoena was issued, this argument is also moot.

UNITED STATES DISTRICT COURT

CENTRAL

District of

UTAH

UNITED STATES OF AMERICA

V.

JUDGMENT IN A CRIMINAL CASE

David Vasquez-Marquez

Case Number:

DUTX 2:09CR00498-001 TC

USM Number:

16377-081

Carlos Garcia

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section
8 USC § 1326

Nature of Offense
Reentry of a Previously Removed Alien

Offense Ended

Count
1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

04/29/2010

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Name and Title of Judge

Chief, United States District Court Judge

5-5-2010

Date

DEFENDANT: David Vasquez-Marquez
CASE NUMBER: 2:09CR00498-001 TC

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

9 Months, with Credit for Time Served

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: David Vasquez-Marquez
CASE NUMBER: 2:09CR00498-001 TC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: David Vasquez-Marquez
CASE NUMBER: 2:09CR00498-001 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States.

DEFENDANT: David Vasquez-Marquez
CASE NUMBER: 2:09CR00498-001 TC

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0	\$ _____ 0
---------------	------------	------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: David Vaquez-Marquez
CASE NUMBER: 2:09CR00498-001 TC

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7-10
are the
Statement of Reasons
which will be docketed
separately as a sealed
document

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

UNITED STATES DISTRICT COURT

MAY - 5 2010
BY D. MARK JONES, CLERK
Utah DEPUTY CLERK

Central

District of

UNITED STATES OF AMERICA

V.

Tiffany Lynn Herd

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 2:09-cr-000636-001 DB

USM Number: 16501-081

Darin Goff

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 - Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18USC§1344	Bank Fraud		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/29/2010

Date of Imposition of Judgment

Dee Benson

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

4/30/2010

Date

DEFENDANT: Tiffany Lynn Herd
CASE NUMBER: DUTX 2:09-cr-000636-001 DB

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

9 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Tiffany Lynn Herd
CASE NUMBER: DUTX 2:09-cr-000636-001 DB

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Tiffany Lynn Herd
CASE NUMBER: DUTX 2:09-cr-000636-001 DB

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall refrain from incurring new credit charges or opening new lines of credit unless she is in compliance with any established payment schedule and obtains the approval of the probation office.
2. The defendant shall provide the probation office access to all requested financial information.
- 3.. The defendant will submit to drug/alcohol testing as directed by the probation office.
4. The defendant shall participate in a substance abuse evaluation and/or treatment under a co-payment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent businesses where alcohol is the primary item of order.
5. The defendant shall participate in a mental health treatment program under a co-payment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the primary item of order, during the course of treatment or medication. 5. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Tiffany Lynn Herd
CASE NUMBER: DUTX 2:09-cr-000636-001 DB

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 5,291.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Zions Bank, 5595 South State Street, Murray, Utah 84107.	\$5,291.00	\$5,291.00	

TOTALS	\$ <u>5,291.00</u>	\$ <u>5,291.00</u>
--------	--------------------	--------------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Tiffany Lynn Herd
CASE NUMBER: DUTX 2:09-cr-000636-001 DB

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- Restitution in the amount of \$5,291.00 with regular payments to begin immediately, is due and payable to: Zions Bank, 5595 South State Street, Murray, Utah 84107. Upon release from incarceration the defendant shall pay \$100 a month or an amount deemed appropriate by the probation office toward restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

REMUS RON GRAY,

Defendant.

CASE: 2:09-CR-00664 TS

PRELIMINARY ORDER OF FORFEITURE

JUDGE: TED STEWART

IT IS HEREBY ORDERED that:

1. As a result of a guilty plea to Count 1 of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924(d)(1), the defendant Remus Ron Gray shall forfeit to the United States all property that was proceeds of, involved in, used, or intended to be used in a violation of 18 U.S.C. § 922(g)(1), including but not limited to:

- Excam Revolver
- Associated Ammunition

2. The Court has determined that based on a guilty plea of Possession of a Firearm by a convicted Felon, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such

offense.

3. Upon entry of this Order the Attorney General, or its designee, is authorized to seize and conduct any discovery proper in identifying, locating, or disposing of the property subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. Upon entry of this Order the Attorney General or its designee is authorized to commence any applicable proceeding to comply with statutes governing third party interests, including giving notice of this Order.

5. The United States shall publish notice of this Order on its intent to dispose of the property in such a manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject property.

6. Any person, other than the above named defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and amendment of the order of forfeiture pursuant to 21 U.S.C. § 853.

7. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this

Preliminary Order of Forfeiture shall become final as to the defendant at the time of sentencing and shall be made part of the sentence and included in the judgment.

8. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

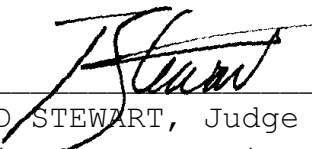
10. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

//This space intentionally left blank//

11. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 5th day of May, 2010.

BY THE COURT:



TED STEWART, Judge
United States District Court

James D. Garrett, #6091
GARRETT & GARRETT
Judge Building
8 East Broadway, Suite 615
Salt Lake City, Utah 84111
Telephone: (801) 581-1144
Attorney for Defendant

FILED
U.S. DISTRICT COURT
2010 MAY -5 P 2:25
DISTRICT CLERK
SYDNEY L. GIBSON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ANTONIO LOPEZ-PULIDO et. al.,
Defendants.

:
:
:
:
:
:
:
:
:
:
:
:

ORDER OF VISITATION

Case No.: 2:09-cr-729 CW

Judge: CLARK WADDOUPS

Based upon the Motion for Order of Visitation filed by the Defendant, Antonio Lopez-Pulido, and for good cause showing, it is hereby,

ORDERED, ADJUGED and DECREED as follows:

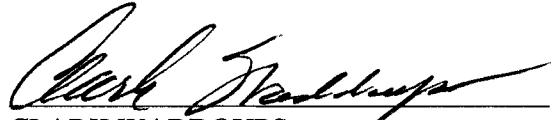
Weber County Sheriffs Office is hereby directed to allow visitation with the defendants attorney and/or investigator and/or interpreter. Counsel and/or investigator and/or interpreter will be allowed to bring in laptop computers for viewing the electronic discovery in the above-entitled case.

IT IS FURTHER ORDERED, ADJUGED and DECREED:

If the Weber County Correctional Facility cannot facilitate such visitation, it is directed that the Marshals transport the Defendant to the Marshals Office in the Courthouse and that the

Defendant be allowed to visit with his attorney and/or investigator and/or interpreter and review the electronic discovery via laptop in a secure holding cell within the Courthouse.

DATED this 5th day of May, 2010.


CLARK WADDOUPS
United States District Court Judge

CERTIFICATE OF MAILING

I hereby certify that on this 4th day of May, 2010, I mailed or electronically transmitted, postage pre-paid, a true and correct copy of the foregoing ORDER OF VISITATION to the following:

Robert A. Lund
185 South State Street, #300
Salt Lake City, Utah 84111
Robert.Lund@usdoj.gov, cindy.dobyns@usdoj.gov

Robert B. Breeze
robert.breeze@gmail.com, rbreeze@lgcy.com

Mary C. Corporon
mcc@cwesq.net, jenniferw@cwesq.net

Todd A. Utzinger
todd.utzingerlaw@integra.net, susana.utzingerlaw@integra.net

Joshua Michael Bowland
joshbowland@aol.com

Heather E. Harris
heatheremharris@hotmail.com, lauraedwards@qwestoffice.net, scottwilliams1@qwestoffice.net

_____/S/ Jaci Ashdown

FILED
U.S. DISTRICT COURT

2010 MAY -5 A 7:12

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SALVADOR RAMIREZ, MIGUEL ANGEL
CHAVEZ, and HENRY MACIAS MEDINA,

Defendants.

TRIAL ORDER

Criminal No. 2:09-CR-784-TS

The final pretrial conference in this matter is scheduled for Wednesday, July 7, 2010 at 9:30 a.m. in Courtroom 2B in St. George, UT.

This case is set for a 3-day trial to begin on Tuesday, July 20, 2010, at 8:30 a.m. in Courtroom 142 in Salt Lake City, UT. **The attorneys are expected to appear in court at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.**

Counsel are instructed as follows:

1. Court-Imposed Deadlines.

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

2. Jury Instructions

The court has adopted its own standard general jury instructions, copies of which may be obtained from the court's website. The procedure for submitting proposed jury instructions is as follows:

(a) The parties must serve their proposed jury instructions on each other **at least ten business days before trial**. The parties should then confer in order to agree on a single set of instructions to the extent possible.

(b) If the parties cannot agree upon one complete set of final instructions, they may submit separately those instructions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions for the case.

(c) The joint proposed instructions (along with the proposed instructions upon which the parties have been unable to agree) must be filed with the court **at least five business days before trial**. All proposed jury instructions must be in the following format:

(i) An original and one copy of each instruction, labeled and numbered at the top center of the page to identify the party submitting the instruction (e.g., "Joint Instruction No. 1" or "Plaintiff's Instruction No. 1"), and including citation to the authority that forms the basis for it.

(ii) Email a copy of the proposed instructions to utdecf_stewart@utd.uscourts.gov as a Word or WordPerfect document. Include the case number in the subject line. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(d) Each party should file its objections, if any, to jury instructions proposed by any other party **no later than two business days before trial**. Any such objections must recite the proposed instruction in its entirety and specifically highlight the objectionable language contained therein. The objection should contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit, in conformity with paragraph 2(c)(i) - (ii) above, an alternative instruction covering the pertinent subject matter or principle of law. Any party may, if it chooses, submit a brief written reply in support of its proposed instructions **on the day of trial**.

(e) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper and will not be given.

(f) Modified versions of statutory or other form jury instructions (e.g., Federal Jury Practice and Instructions) are acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

3. Verdict Forms

The procedure outlined for proposed jury instructions will also apply to verdict forms.

4. Requests for Voir Dire Examination of the Venire

The parties may request that, in addition to its usual questions, the court ask additional specific questions to the jury panel. The court's standard voir dire questions are available from the court's website. Any such request should be submitted in writing to the court and served upon opposing counsel **at least five business days before trial**.

5. Motions in Limine

All motions in limine are to be filed with the court **at least five business days before trial**, unless otherwise ordered by the court. Each such motion shall specifically identify the relief sought, and shall be accompanied by a memorandum of law and a proposed order. No brief in support of, or in opposition to, such motion shall be longer than three (3) pages in length.

6. Trial Briefs

Each party should file its Trial Brief, if any, no later than five business days before trial.

7. Exhibit Lists/Marking Exhibits

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available from the court's website, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Sandy Malley, at 524-6617. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

In addition, all parties are required to submit copies of their exhibits on a CD or a DVD for the court's use during trial.

8. Witness Lists

All parties are required to submit separate witness list for the court's use at trial. The form is available from the court's website.

9. Courtroom Conduct

In addition to the rules outlined in the local rules, the court has established the following ground rules for the conduct of counsel at trial:

- (a) Please be on time for each court session. In most cases, trial will be conducted from 8:30 a.m. until 1:30 p.m., with two fifteen minute breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.
- (b) Stand as court is opened, recessed or adjourned.
- (c) Stand when the jury enters or retires from the courtroom.
- (d) Stand when addressing, or being addressed by, the court.
- (e) In making objections and responding to objections to evidence, counsel should state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, "Objection . . . irrelevant and inadmissible under Rule 402." or "Objection . . . hearsay and inadmissible under Rule 802."
- (f) Sidebar conferences are discouraged and will not be allowed except in **extraordinary** circumstances. Most matters requiring argument should be raised during recess. Please plan accordingly.
- (g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.
- (h) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(i) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and not by their first or given names.

(j) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(k) Offers of, or requests for, a stipulation shall be made out of the hearing of the jury.

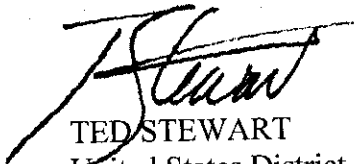
(l) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

10. Courtroom Technology

If counsel wish to use the courtroom evidence system, they should contact the courtroom deputy **at least five business days before trial** at (801) 524-6617 to schedule an appointment to become familiar with the technology to be used during trial. Trial counsel and support staff are expected to familiarize themselves with the system, and arrange any additional technological needs.

DATED this 4th day of May, 2010.

BY THE COURT:



TED STEWART
United States District Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAY -3 2010

D. MARK JONES, CLERK

BY

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DISTRICT

UNITED STATES OF AMERICA,

Plaintiff,

VS.

HENRY MACIAS-MEDINA,

Defendant.

ORDER TO CONTINUE TRIAL

CASE NO. 2:09-CR-00784

JUDGE: TED STEWART

Based on the Defendant's Motion to Continue Trial in the above-entitled case, and for good cause appearing, it is hereby

ORDERED that the trial previously set for June 21, 2010 at 8:30 a.m. is continued to
 , 2010, at 8:30 a.m.

Pursuant to 18 U.S.C. §3161(h)(7), the Court finds the ends of justice served by granting such a continuance outweigh the best interests of the public and the Defendant in a speedy trial. More specifically,

1. Less than a month before the date set for trial, the case was reset for a new trial date in Salt Lake City which requires Attorney for Defendant to clear her calendar and be out of town for the trial. Attorney for Defendant had arranged this for the original trial date, but now has a conflict with the new trial date.
2. Attorney for the Defendant will be out of the state on the date now set for the trial.
3. On April 26, 2010, Defendant rescinded a previously arranged change of plea

agreement and will now be going to trial. Defendant is now housed one hour (one way) from his attorney's law office.

4. This is a complex case with three Defendants left to go to trial. Defendant's Attorney is well-versed in this case and is prepared for trial. As a sole practitioner, there is no one to take her place on behalf of Defendant and she is the best prepared to represent him.

Due to the complexity of the case, the large amount of discovery involved, the need for counsel to represent her client, and the unavailability of counsel on the rescheduled date for trial; the Court finds that the failure to grant such a continuance in the proceeding would be likely to result in a miscarriage of justice and, taking into account due diligence, would deny counsel for Defendant the ability to fairly represent her client. The time of the delay shall constitute excludable time under the Speedy Trial Act.

DATED this 29 day of April, 2010.


UNITED STATES COURT JUDGE
Magistrate

CERTIFICATE OF MAILING DELIVERY

I DO HEREBY CERTIFY, that on the 27th day of April, 2010, I e-filed a true and correct copy of the foregoing document to Paul Kohler, Assistant U.S. Attorney.

/s/Erin Runolfson
Erin Runolfson
Legal Assistant

FILED
U.S. DISTRICT COURT
2009 MAY -4 P 2:58
DISTRICT OF UTAH, CENTRAL DIVISION
BY: [Signature]

UNITED STATES OF AMERICA,

Plaintiff,

v.

URIAH A. KENNEDY, and
GREGORY LEE HANSEN,

Defendants.

Case No. 2:09 CR 00905 DAK

SECOND ORDER EXCLUDING
TIME UNDER THE
SPEEDY TRIAL ACT

United States Magistrate Samuel Alba

Defendants Uriah A. Kennedy and Gregory Lee Hansen appeared together with their counsel at the status conference on April 27, 2010. The government was represented by the United States Attorney's Office.

After the Court inquired about future motions that the defendants anticipated filing, the defendants indicated that they intended to file motions for severance, for a James Hearing, and discovery related matters. Discovery was also discussed, and the government represented that based on their best information, discovery had been provided. Counsel for defendant Kennedy raised the belief that additional business record documents were in the possession of the FDIC in New Orleans. Following the hearing, the government filed a notice indicating that they had investigated and determined that administrative officials at the FDIC had approximately twenty boxes of business records related to entities controlled by the defendants. The Court is informed

that the discovery in the case has now grown, is extensive, and will comprise approximately twenty-eight boxes of transactional records, bank records, and interview reports, among other things. The defendants requested the records and time to review the records and finalize the motions to be filed. The government continues to proceed with discovery pursuant to its normal statement of discovery policy. The Court stated, given the defense's need to review discovery and file motions, that it was appropriate to grant additional time for the defense to become familiar with the documentation, that it was proper to continue the time for setting of trial, and that said time should be excluded from trial computations under the Speedy Trial Act.

FINDINGS AND ORDER

Based upon the information presented to the Court about the nature of the case, and representations of the defendants that the case continues to be complex and that the defendants require and request additional time to do their investigation, to file defense motions, and to become familiar with and prepare for the trial in the case, and the Court being familiar with the file herein, the Court makes the following Findings:

1. This case is deemed to be complex based upon the nature of the prosecution and with an amount of discovery that should be reviewed by counsel for the defendants.
2. The Court finds that additional time for preparation of motions and preparation for trial is appropriate. Taking into account the exercise of due diligence by the parties, it is unreasonable to expect this process to be completed in an adequate way within the time anticipated by the Speedy Trial Act, Title 18 U.S.C. Sections 3161, et seq., see especially Section 3161(h)(7)(A) and (B)(ii).

3. The Court further finds that in view of the complexity of the matter, the ends of justice would be best served by setting a status conference for the defendants to report to the Court on the motions that they intend to file on or about June 15, 2010, in order for defense counsel to adequately review all of the discovery and evidence in this matter. The ends of justice so served outweigh the best interest of the defendants, the public or the United States in a speedy trial. All time from the date of the initial appearance up through and including the date of the trial is excludable from any calculation required by the Speedy Trial Act.

4. The Court also finds, in accordance with the provisions of 18 U.S.C. §§ 3161 (h) (7) (A) and 3161(h)(7)(B)(iv), that the ends of justice, the public interest, and the defendants' interests are served by these delays, continuing the trial date to provide proper time to prepare for trial, outweigh the best interest of the public and the defendants in a speedy trial.

Based upon the foregoing Findings, it is hereby ORDERED:

1. A status conference is set in this matter for June 15, 2010, at 10:00 AM.
2. All time from the January 6, 2010, initial appearance for Gregory Lee Hansen up through and including the June 15, 2010, original status conference (or whatever date the status conference actually occurs), is excludable and is hereby excluded from any calculation required by the Speedy Trial Act, Title 18 U.S.C. § 3161 (h) (1) (D), 3161 (h)(7)(A), et seq.

DATED this 4th day of May, 2010.

BY THE COURT:


SAMUEL ALBA
United States Magistrate Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAY - 4 2010

BY D. MARK JONES, CLERK
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

SECRETARY OF LABOR, U.S. DEP'T OF
LABOR,

Petitioner,

v.

FOOPTUBE, LLC, dba SENORY SWEEP,
and DAVE RUSHTON, individually,

Respondents.

ORDER

Case No. 2:09 cv 26

Pending before the court is the Petitioner's Amended Motion to Enforce Judgment. This motion was filed on August 14, 2009. On January 28, 2010, this court issued an Order to Show Cause requiring the Respondents to inform the court as to the status of the case and their intention to proceed within fifteen days of the order. The order indicated that a failure to respond would result in the Petitioner's motions being granted as unopposed. This Order was resent to the Respondents on February 10, 2010, after the original was returned undeliverable. Respondent David M. Rushton responded on February 22, 2010 requesting time to hire an attorney. The court granted Mr. Rushton's request and set April 9, 2010 as a deadline for filing a response to the Petitioner's pending motions. On April 9, 2010, Mr. Rushton informed the court that he still had not hired an attorney and indicated that he does not intend to hire one in the

future. With the deadline for opposition passed and having received no opposition to the pending motions, the court separately GRANTS these motions contemporaneous to this Order.

DATED this 4th day of May, 2010.

BY THE COURT

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive, flowing style. The first name "Dee" is written with a large, looped 'D'. The last name "Benson" is written in a more standard cursive script. The signature is positioned above a horizontal line.

Dee Benson
United States District Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAY - 4 2010

D. MARK JONES, CLERK

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

FOOPTUBE, LLC, d/b/a SENSORY SWEEP,
and DAVE RUSHTON, individually,

Respondents.

Judge Dee Benson

Case No. 2:09cv00026

ORDER GRANTING MOTION
TO SUPPLEMENT THE RECORD

The Court hereby grants Plaintiff's Motion to Supplement Record on Amended Petition for Contempt Adjudication. Specifically, Defendant Dave Rushton's deposition testimony attached to the Motion as Exhibits A and B, are now part of the record for purposes of Plaintiff's Amended Petition for Contempt Adjudication filed on August 14, 2009.

Dated this 4th day of May, 20 10.

BY THE COURT:



Dee Benson
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAY - 4 2010

D. MARK JONES, CLERK
DEPUTY CLERK

SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

FOOPTUBE, LLC, d/b/a SENSORY SWEEP,
and DAVE RUSHTON, individually,

Respondents.

Judge Dee Benson

Case No. 2:09cv00026

ADJUDICATION OF CONTEMPT

This Court holds Respondents, Fooptube LLC, d/b/a Sensory Sweep, and Dave Rushton in contempt for violating the Court's Judgment, dated February 17, 2009, requiring, among other things, compliance with the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 217) (FLSA), and the payment of back wages in the amount of \$942429.09 by August 10, 2009. The FLSA requires employers to pay minimum wages, overtime compensation, and to keep adequate payroll records. 29 U.S.C. §§ 206, 207, 211, 215(a)(2) and § 215(a)(5). The minimum wage provision requires Respondents to pay their employees at least \$6.55 an hour. The overtime provisions require Respondents to pay their employees one and one half the times their regular rate of pay for each hour worked over forty hours in a work week.

After an investigation of Respondents initiated in December 2008, the United States Department of Labor's Wage Hour Division found that Respondents had missed entire payrolls and were in violation of the FLSA by failing to pay minimum wage, overtime, and to keep proper records. The parties entered into an Amended Consent Injunction which became a Judgment entered by the Court on February 17, 2009. Respondents have violated the Judgment of this Court by, among other violations, failing to comply with the FLSA's requirement to pay minimum wages to their employees. In addition, Respondents have violated the Judgment of this Court by failing to

pay the back wage liability of \$942,429.09 by no later than August 10, 2009. This Order sets forth the requirements that Respondents must follow to correct their past violations of the FLSA and to prevent future violations.

PROCEDURAL HISTORY

Petitioner is the duly appointed and confirmed Secretary of Labor, United States Department of Labor. Petitioner is charged with the enforcement duties, responsibilities, and authority as vested by the Act and by Reorganization Plan No. 6 of 1950 [15 F.R. 3124, 64 Stat. 1263] effective May 24, 1950.

Respondent Fooptube LLC, d/b/a Sensory Sweep (Fooptube), is a limited liability company with a place of business presently located at 114 Business Park Drive, Draper, UT 84020, within the jurisdiction of this Court.

Respondent Dave Rushton, the owner of Fooptube, resides at 10711 Cedar Brook Place, South Jordan, UT 84095, within the jurisdiction of this Court.

Wage Hour conducted an investigation of Respondents in December 2008. The investigation determined that Respondents had failed to fully compensate a majority of Fooptube employees for hours worked starting October 1, 2008. As a result, Respondents were in violation of the minimum wage and overtime provisions of the FLSA. Respondents were also in violation of Section 15(a)(1) of the FLSA, 29 C.F.R. § 215(a), because Respondents were shipping goods in commerce that were manufactured by employees who were working in violation of the FLSA. Such goods are "hot goods" under Section 15(a)(1) of the FLSA.

On January 14, 2009, Petitioner instituted Civil Action No. 2:09-cv-00026-DB pursuant to section 17 of the FLSA to permanently enjoin and restrain Fooptube and Dave Rushton from violating the provisions of sections 6, 7, 11, 15(a)(1), and 15(a)(2) of the FLSA.

On February 17, 2009, pursuant to consent of the parties, an Amended Consent Injunction (Judgment) was entered by the Honorable Dee Benson of this Court, permanently enjoining and restraining Respondents and those persons in active concert or participation with them who received actual notice of such judgment, from violating the provisions of sections 6, 7, 11, 15(a)(1), 15(a)(2), and 15(a)(5) of the FLSA in any of the following manners:

I

Defendants shall not, contrary to sections 6 and 15(a)(2) of the FLSA, fail to pay to their non-exempt employees engaged in commerce or the production of goods for commerce or in an enterprise engaged in commerce or the production of goods for commerce, within the meaning of the FLSA, wages at rates not less than \$6.55 an hour, or any rate subsequently made applicable by amendment to the FLSA, for every hour worked by Defendants' employees.

II

Defendants shall not, contrary to sections 7 and 15(a)(2) of the FLSA, employ any employees in commerce or in the production of goods for commerce or in an enterprise engaged in commerce or the production of goods for commerce, within the meaning of the FLSA, for workweeks longer than forty (40) hours without compensating such non-exempt employees for their employment in excess of forty (40) hours per workweek at rates not less than one and one-half times the regular rates at which they are employed.

III

Defendants shall not, contrary to sections 11(c) and 15(a)(5) of the FLSA, fail to make, keep, and preserve adequate and accurate records of its employees, and of the wages, hours, and other conditions and practices of employment maintained by Defendants as prescribed by the regulations issued and from time to time amended pursuant to section 11(c) of the FLSA (29 C.F.R. Part 516). Defendants shall make such records available at all reasonable times to representatives of the Plaintiff.

IV

A. Defendants are hereby restrained from transporting; offering for transportation; shipping, delivering or selling in commerce (whether by electronic means or otherwise); or shipping, delivering or selling with knowledge that shipment, delivery or sale in commerce is intended, the following: Any and all software, video games, video game components, and electronic data files owned and/or controlled by Defendants any and all software, video games, video game components, and electronic data files worked on by Defendants' employees since October 1, 2008, until such time as Defendants have paid all the back wages due to employees and are paying current employees in compliance with the FLSA. Unless and until Defendants have paid all the back wages due to employees and are paying current employees in compliance with the FLSA, all goods developed and/or manufactured by Defendants comprise "hot goods" under Section 15(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 221 *et. seq.*).

B. Defendants are hereby restrained from continuing to withhold the sum of \$942,429.09 in unpaid wages (minimum wage and overtime for hourly employees and minimum weekly pay of \$455 for salaried exempt employees). The amounts due to each employee are set forth on the spread sheet attached as Exhibit A to this Amended Consent Injunction. Defendants shall pay these back wages, per

the terms set forth below at (C)(1)(a)-(e), (C)(2)(a)-(e), and (C)(3), no later than 6 months from the date of this Amended Consent Injunction (i.e., no later than August 10, 2009).

C. While Defendants are still in arrears on back wages due to Defendants' employees, Plaintiff, through the Wage-Hour Division Salt Lake City District Office (hereinafter "Wage-Hour Division"), will agree to allow shipment of goods, described above at paragraph IV(A), on a case-by-case basis as set forth below at (C)(1). In addition, for any incoming funds that Defendants receive, independent of the process described in (C)(1), the parties agree to use such funds as set forth below at (C)(2).

1. Defendants shall notify the Wage-Hour Division each time Defendants anticipate shipping by any means (electronic or otherwise) any products, including but not limited to electronic data files, software, video games, video game components, etc., whether sent as "milestone shipments" or by any other means. The Wage-Hour Division will then lift its objection to ship—i.e., the restraint placed on Defendants described at IV(A) above—on a case-by-case basis. Failure to obtain advance approval from the Wage-Hour Division is a violation of this Amended Consent Injunction. Receipt of any and all funds for shipments under this paragraph by Defendants shall be handled in the following manner:

(a) Defendants shall notify the Wage-Hour Division immediately upon receipt of any all and funds received for shipments under paragraph (C)(1).

(b) All funds received by Defendants in exchange for shipments under paragraph (C)(1) by shall immediately be placed in a separate identifiable account segregated from, and not commingled with, any funds used for operating or other expenses of Defendants.

(c) Defendants shall use funds received in exchange for shipments under paragraph (C)(1) to pay employees first before using the funds for any other purpose, with the exception of funds needed to continue in business (e.g., operating costs such as rent, health insurance premiums, and utilities). Defendants shall promptly alert the Wage-Hour Division of the amount they need from the incoming funds to pay required operating costs, not to exceed one-third ($1/3$) of the incoming funds (at least two-thirds ($2/3$) of the incoming funds will be used to satisfy current and back wages). The remaining funds allocated to back wage or current wage payments shall be segregated by Defendants from operating expenses and remain in the separate account required by paragraph (C)(1)(b) until disbursed to employees or former employees.

(d) Defendants shall maintain detailed records of the funds received for shipments under paragraph (C)(1), how such funds are distributed to approved operating expenses or employees or former employees, and shall provide the Wage-Hour Division with an accounting upon request. With respect to money segregated for disbursement to employees, Defendants shall first meet the current payroll needs. . Second, Defendants shall apply any additional monies toward the payment of back wages satisfying the most recent unpaid pay period and then the oldest

liability and then alternating between the two. Specifically, after payment of current wages, Defendants will pay the back wages due in the following order: (1) back wages due for missed payroll for the pay period January 16-January 31, 2009; (2) back wages due for missed payroll for the pay period October 1-October 15, 2008; (3) back wages due for missed payroll for the pay period January 1, 2009-January 15, 2009; (4) back wages due for missed payroll for the pay period from October 16-October 31, 2008; (5) back wages due for the missed payroll for the pay period from December 16-December 31, 2008; (6) back wages due for missed payroll for the pay period November 1-November 15, 2008; (7) back wages due for missed payroll for the pay period December 1-December 15, 2008; and (8) back wages due for missed payroll for the pay period November 16-November 30, 2008.

(e) Defendants shall provide the Wage Hour Division with preliminary proof that it has paid employees from funds received for shipments under paragraph (C)(1) within seven (7) days after Defendants receive any such funds. Preliminary proof of payment shall consist of a report that lists the employees' names, check numbers, and gross and net amounts paid. This list shall also contain addresses and social security numbers of employees receiving payment. Final proof of payment, which will be due within thirty (30) days after Defendants receive any such funds, shall consist of a copy of the front and back of cancelled wage checks.

2. Any and all funds received by Defendants not covered by paragraph (C)(1) including funds from past invoices, accounts receivable, prospective contracts, advances, or any other source, shall be handled in the following manner:

(a) Defendants shall notify the Wage-Hour Division immediately upon receipt of any all and funds received under paragraph (C)(2).

(b) All funds received by Defendants under paragraph (C)(2) shall immediately be placed in the separate identifiable account segregated from, and not commingled with, any funds for operating or other expenses of Defendants required by paragraph (C)(1)(b).

(c) Defendants shall pay employees first before using funds received under paragraph (C)(2) for any other purpose, with the exception of funds needed to continue in business (e.g., operating costs such as rent, health insurance premiums, and utilities). In the same manner as set forth in paragraph (C)(1)(c), Defendants shall promptly alert the Wage-Hour Division of the amount they need from the incoming funds to pay required operating costs, not to exceed one-third ($1/3$) of the incoming funds (at least two-thirds ($2/3$) of the incoming funds will be used to satisfy current and back wages). The remaining funds allocated to back wage or current wage payments shall be segregated by Defendants from operating expenses and remain in the separate account required by paragraph (C)(1)(b) until disbursed to employees or former employees.

(d) Defendants shall maintain detailed records of the funds received for shipments under paragraph (C)(2), how such funds are

distributed to approved operating expenses or employees or former employees, and shall provide the Wage-Hour Division with an accounting upon request. With respect to money segregated for disbursement to employees, Defendants shall first meet the current payroll needs. Second, Defendants shall apply any additional monies toward the payment of back wages satisfying the most recent unpaid pay period and then the oldest liability and then alternating between the two. Specifically, after payment of current wages, Defendants will pay the back wages due in the following order: (1) back wages due for missed payroll for the pay period January 16-January 31, 2009; (2) back wages due for missed payroll for the pay period October 1-October 15, 2008; (3) back wages due for missed payroll for the pay period January 1, 2009-January 15, 2009; (4) back wages due for missed payroll for the pay period from October 16-October 31, 2008; (5) back wages due for the missed payroll for the pay period from December 16-December 31, 2008; (6) back wages due for missed payroll for the pay period November 1-November 15, 2008; (7) back wages due for missed payroll for the pay period December 1-December 15, 2008; and (8) back wages due for missed payroll for the pay period November 16-November 30, 2008.

(e) Defendants shall provide the Wage Hour Division with preliminary proof that it has paid employees from funds received under paragraph (C)(2) within seven (7) days after Defendants receive any such funds. Preliminary proof of payment shall consist of a report that lists the employees' names, check numbers, and gross and net amounts paid. This list shall also contain addresses and social security numbers of employees receiving payment. Final proof of payment, which will be due within thirty (30) days after Defendants receive any such funds, shall consist of a copy of the front and back of cancelled wage checks.

Subsequently, after entry of the Judgment, the Wage-Hour Division received complaints from six former employees of Respondents who stated they have not received full compensation for hours worked. Specifically, these individuals informed the Wage-Hour Division that they were not paid any wages for certain work weeks commencing March 1, 2009. Based on records Respondents provided to the Wage-Hour Division (pursuant to the Judgment), the Wage-Hour Division verified that Respondents did not fully compensate their employees for all hours worked. Petitioner then filed a Petition for Contempt Adjudication on June 25, 2009.

FINDINGS OF FACT

1. In May 2009, a number of former employees—six in total—contacted the Wage-Hour Division and reported that Respondents failed to fully compensate employees for hours worked.

Specifically, these six individuals told the Wage Hour Investigator that Respondents failed to pay them any wages at all for a number of pay periods after March 1, 2009.

2. Based on the records Respondents provided to Wage-Hour, the Wage Hour Investigator confirmed a majority of these allegations. Specifically, for pay periods for which Wage Hour has proof of payment, the Wage Hour Investigator verified that these individuals did not receive wages while they were still employed by Respondents. By not paying employees any wages, Respondents violated the minimum wage and potentially the overtime and record keeping provisions of the FLSA.

3. The "final proof of payment" Respondents provided to the Wage-Division, pursuant to the terms set forth in the Judgment, did not include proof of payment for the pay periods covering March 16-31, April 1-15 and May 1-to the present. Accordingly, there are other potential back wage liability issues.

CONCLUSIONS OF LAW

1. Fooptube LLC, d/b/a Sensory Sweep, is an enterprise engaged in commerce and the production of goods for commerce, and is covered by the FLSA. 29 U.S.C. § 201, et seq.

2. Dave Rushton is an "employer" within the meaning of Section 3(d) of the FLSA. 28 U.S.C. § 203(d).

3. Respondents employ employees in commerce or in the production of goods for commerce.

4. Wage Hour's investigation shows that since at least March 1, 2009, Respondents failed and refused to comply with the Judgment entered by this Court on February 17, 2009, in the following respects:

- (a) Respondents have repeatedly violated the provisions of §§ 6 and 15 (a)(2) of the FLSA by employing certain of their employees engaged in commerce or in the production of goods for commerce or in an enterprise engaged in commerce or in the production of goods for commerce, at wages less than \$6.55 per hour;

- (b) Respondents have failed to provide preliminary and/or final proof of payment for pay periods covering March 16-31, April 1-15 and May 1-to the present;
 - (c) Respondents have repeatedly failed to cooperate with the spirit, intent, and specific mandates of the Judgment by failing to timely provide adequate documentation (for the most part Respondents have failed to provide any documentation), required under the Judgment, to the Wage-Hour Division so that the Wage-Hour Division can ensure Respondents' compliance with the FLSA and the terms of the Judgment.
 - (d) Respondents have failed to pay any of the back wage liability of \$942,429.09 due to be paid in full no later than August 10, 2009.
4. Respondents pay practices giving rise to the current matter were not only repeated violations of the FLSA, they were willful.
5. Given that Respondents committed the FLSA violations after the Judgment, the Court finds it necessary to impose stringent sanctions to prevent future violations of the FLSA and to make the employees "whole."

CONCLUSION

Based on the above findings, the Court ORDERS that:

- (1) Respondents provide an accounting of each shipment of each and every good shipped from January 14, 2009 (the date Petitioner filed her complaint), until the date on which Respondents come into current compliance with the Fair Labor Standards Act, and pay all the back wages due to employees, including: a description of what was shipped (by electronic means or otherwise); the date of shipment, the recipient's name, address, point of contact, and telephone number; the value of the good shipped (i.e., the invoiced amount); and the date on which Respondents received payments for such shipments (if payment has not been received, the date on which payment is expected). The accounting must include the goods to which Petitioner lifted her objection and all other goods that were shipped out from January 14, 2009.

- (2) Respondents provide an accounting of all proceeds from any shipment (as discussed above in paragraph (a)), or any other incoming funds from any source, from January 14, 2009, until the date on which Respondents come into current compliance with the Fair Labor Standards Act, and pay all the back wages due to employees. The accounting must include the location where all incoming funds were deposited (e.g., the specific bank account, bank name, bank address, and bank account title holder) and what the funds were used for.
- (3) Respondents provide a list of all their customers from January 14, 2009, and all related contracts, invoices, and accounts receivable, until the date on which Respondents come into current compliance with the Fair Labor Standards Act, and pay all the back wages due to employees, and all orders for goods, received from any customers, including new orders, or future orders, whether filled or not as yet filled.
- (4) Respondents produce all records of incoming funds (including funds from any source, not limited to funds received for shipments to which Petitioner lifted its objection), until the date on which Respondents come into current compliance with the Fair Labor Standards Act, and pay all the back wages due to employees.
- (5) Respondents produce all records reflecting what any incoming funds were specifically used for (Respondents were obligated to maintain detailed records of all incoming funds and provide Petitioner an accounting upon request for how the funds were spent), until the date on which Respondents come into current compliance with the Fair Labor Standards Act, and pay all the back wages due to employees.
- (6) Respondents produce all records reflecting where any incoming funds received from January 14, 2009, and onward, were deposited, including but not limited to all bank statements, until the date on which Respondents come into current compliance with the Fair Labor Standards Act, and pay all the back wages due to employees, for all accounts held by Fooptube, Mr. Rushton, Black Ice, and any other entities in which Fooptube and/or Mr. Rushton have an interest.
- (7) Respondents produce final proof of payment (as defined in the Judgment) for the following pay periods March 16-31, April 1-15 and May 1-to the present; and preliminary and final

proof of payment for pay periods going forward as specified in the Judgment (i.e., preliminary proof within 7 days and final proof within 30 days of the date of payment), until the date on which Respondents come into current compliance with the Fair Labor Standards Act, and pay all the back wages due to employees.

- (8) Respondents notify all recipients of all shipments of goods that all payments to which Respondents become entitled by reason of such shipments, be sent directly from the customer to Petitioner so that Petitioner can make the distributions as appropriate under the terms of the Judgment.
- (9) Since Respondents are still not in compliance with the FLSA, additional amounts of back wages have been accruing since March 1, 2009, and potentially earlier, to the present time, in amounts not presently known to Petitioner. Respondents are ordered to pay these amounts, plus an equal amount as compensation for delay in payment of wages.
- (10) Since Respondents have failed to pay the back wage liability due on August 10, 2009, in the amount of \$924,429.09, as set forth in the Judgment, Respondents are ordered to pay this amount, plus an equal amount as compensation for delay in payment of wages.
- (11) Respondents bear all costs, fees, and expenses incurred by Petitioner and her representatives in bringing forth this Petition.
- (12) This Court's prior Judgment, dated February 17, 2009, remains in effect and includes the requirements set forth therein.

Dated this 24th day of May, 2010.

BY THE COURT:



Dee Benson
United States District Judge

FILED
U.S. DISTRICT COURT

2010 MAY -5 P 3:31

DISTRICT CLERK

BY: DEBBIE YOUNG

RECEIVED

MAY 03 2010

**OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS**

Order submitted by:

VAN COTT, BAGLEY, CORNWALL & McCARTHY, P.C.

Thomas R. Barton (6827) (tbarton@vancott.com)

Chandler P. Thompson (11374) (cthompson@vancott.com)

Alex B. Leeman (12578) (aleeman@vancott.com)

36 South State Street, Suite 1900

Salt Lake City, Utah 84111

Telephone: (801) 532-3333

Facsimile: (801) 534-0058

Attorneys for Plaintiff Merle Hay Mall

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MERLE HAY MALL, an Iowa limited
partnership,

Plaintiff,

vs.

NBO SYSTEMS, INC., a Maryland
corporation, and KEITH A. GUEVARA, an
individual, and JOHN DOES 1-20,

Defendants.

Case No. 2:09-cv-53

**ORDER ON MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Judge Bruce S. Jenkins

Defendants NBO Systems, Inc.'s ("NBO"), and Keith A. Guevara's ("Guevara")

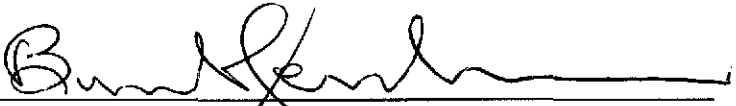
(collectively "Defendants") Motion for Partial Summary Judgment came before the Court for hearing on April 9, 2010. Chandler P. Thompson of Van Cott, Bagley, Cornwall, & McCarthy, P.C., appeared on behalf of Plaintiff Merle Hay Mall ("MHM") and Greg J. Sanders and Patrick C. Burt of Kipp & Christian, P.C. appeared on behalf of Defendants. Pursuant to Fed. R. Civ. P.

56, and based upon argument presented, the papers submitted, and the evidence before the Court, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion for Partial Summary Judgment is GRANTED and DENIED as follows:

1. The Court grants Defendants' Motion pertaining to choice of law, finding that MHM's contract claim shall be adjudicated according to the substantive law of the state of Maryland, as stated in the contract at issue (the "Contract"), and that MHM's claims for conversion and unjust enrichment shall be adjudicated according to the substantive law of the state of Utah.
2. The Court denies Defendants' Motion for Summary Judgment on MHM's claim of conversion, finding that summary judgment is precluded by questions of fact.
3. The Court denies Defendants' Motion for Summary Judgment on the issue of whether MHM's claim satisfies the minimum amount in controversy requirement.

SO ORDERED this 5th day of May, 2010.



Bruce S. Jenkins
District Court Judge

APPROVED AS TO FORM:

KIPP AND CHRISTIAN, P.C.

/s/ Patrick. C. Burt
Gregory J. Sanders
Patrick C. Burt

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of April, 2010, I caused a true and correct copy of the foregoing **ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT** to be served on the following by first-class mail, postage prepaid:

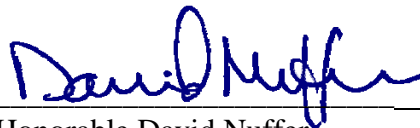
Gregory J. Sanders (2858)
Patrick C. Burt (11138)
KIPP & CHRISTIAN, P.C.
10 Exchange Place, #400
Salt Lake City, UT 84111

Based upon First Tennessee Bank National Association's ("First Tennessee") *Motion for Leave to File Memorandum in Opposition Exceeding Page Limit*, and for good cause shown,

IT IS HEREBY ORDERED that First Tennessee may file its memorandum in opposition to *Plaintiff's Motion to Compel Against Defendant First Tennessee Bank*, which exceeds 10 pages of argument as defined by DUCivR 7-1(b)(3)(B).

DATED this 5th day of May, 2010.

BY THE COURT:



Honorable David Nuffer
Chief Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ROGER J. McCONKIE, RECEIVER
FOR MADISON REAL ESTATE
GROUP, LLC, OKLAHOMA
SUNNYVIEW LP, and OKLAHOMA
OVERLAKE LP,

Plaintiff,
v.

LEW S. McGINNIS, MACCO
PROPERTIES, INC., and SEP
SUNNYVIEW INVESTORS, LLC, an
Oklahoma Limited Partnership and
MIP OVERLAKE APARTMENTS,
L.L.C., an Oklahoma Limited
Partnership,

Defendants.

**ORDER GRANTING
STIPULATED MOTION TO
AMEND AND AMENDED
SCHEDULING ORDER**

Case No. 2:09-cv-00274

Judge Clark Waddoups

Having considered the Parties' Stipulated Motion to Amend Scheduling Order
(docket #29) and for good cause appearing,

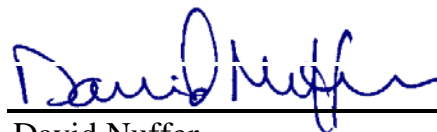
The Court GRANTS the motion and the following matters are scheduled:

- | 4. | RULE 26(a)(2) REPORTS FROM EXPERTSⁱ | DATE |
|-----------|---|-----------------------------------|
| a. | Plaintiff | 5/28/10 8/27/10 |
| b. | Defendant | 6/21/10 9/27/10 |
| c. | Counter reports: Due within 30 days of submission by
opposing party. | |

- | | | |
|-----------|---|------------------------------------|
| 5. | OTHER DEADLINES | DATE |
| a. | Discovery to be completed by: | |
| | Fact discovery | 5/14/10 8/13/10 |
| | Expert discovery | 7/09/10 10/22/10 |
| b. | (<i>optional</i>) Final date for supplementation of disclosures and discovery under Rule 26 (e) | |
| c. | Deadline for filing dispositive or potentially dispositive motions and Daubert motions | 8/13/10 11/19/10 |
-
- | | | |
|-----------|--|---------------------------|
| 7. | TRIAL/SUMMARY PROCEEDING AND PREPARATION FOR TRIAL | DATE |
| a. | Rule 26(a)(3) Pretrial Disclosures ⁱⁱ | |
| | Plaintiff | 02/25/11 |
| | Defendant | <u>03/11/11</u> |
| b. | Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule) | |
| c. | Special Attorney Conference ⁱⁱⁱ on or before | <u>03/25/11</u> |
| d. | Settlement Conference ^{iv} on or before | <u>03/25/11</u> |
| e. | Final Pretrial Conference | 2:30 P.M. <u>04/11/11</u> |
| f. | Trial | |
| | <u>Length</u> | |
| i. | Bench Trial | 8:30 A.M. <u>04/25/11</u> |
| | 5 days | |

DATED this 4th day of May, 2010.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

ⁱⁱ Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

ⁱⁱⁱ The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

^{iv} The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

TIMM LEWIS MONSON,
Plaintiff,

v.

UTAH DEP'T OF CORRS. et al.,
Defendants.

**ORDER TO SHOW CAUSE REGARDING
ORDER TO AMEND DEFICIENT
COMPLAINT**

Case No. 2:09-CV-418 CW

District Judge Clark Waddoups

Plaintiff/inmate, Timm Lewis Monson, filed this *pro se* civil rights suit. See 42 U.S.C.S. § 1983 (2010). Reviewing the complaint, see 28 *id.* § 1915A, in an Order issued February 12, 2010, the Court determined that Plaintiff's complaint is deficient as described below.

Deficiencies in Complaint:

Complaint:

- (a) improperly names "Utah Department of Corrections" and "Utah State Prison Medical Department" as defendants, though they are not independent legal entities that can sue or be sued.
- (b) has claims appearing to be based on conditions of current confinement; however, the complaint was not submitted through contract attorneys.

The Court then provided the following instructions to Plaintiff:

Instructions to Plaintiff

Under Rule 8 of the Federal Rules of Civil Procedure a complaint is required to contain "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks." Fed. R. Civ. P. 8(a). The requirements of Rule 8(a) are intended to guarantee "that defendants enjoy fair notice of what the claims against them are and the grounds upon which they rest." *TV Commc'ns Network, Inc. v. ESPN, Inc.*, 767 F. Supp. 1062, 1069 (D. Colo. 1991), *aff'd*, 964 F.2d 1022 (10th Cir. 1992).

Pro se litigants are not excused from compliance with the minimal pleading requirements of Rule 8. "This is so because a pro se plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide such facts if the court is to determine whether he makes out a claim on which relief can be granted." *Hall v. Bellmon*, 935 F.2d 1106, 1009 (10th Cir. 1991). Moreover, "it is not the proper function of the Court to assume the role of advocate for a pro se litigant." *Id.* at 1110. Thus, the Court cannot "supply additional facts, [or] construct a legal theory for plaintiff

that assumes facts that have not been pleaded." *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989).

Plaintiff should consider the following points before refiling his complaint. First, the revised complaint must stand entirely on its own and shall not refer to, or incorporate by reference, any portion of the original complaint. See *Murray v. Archambo*, 132 F.3d 609, 612 (10th Cir. 1998) (stating amended complaint supercedes original). Second, the complaint must clearly state what each individual defendant did to violate Plaintiff's civil rights. See *Bennett v. Passic*, 545 F.2d 1260, 1262-63 (10th Cir. 1976) (stating personal participation of each named defendant is essential allegation in civil rights action). Third, Plaintiff cannot name an individual as a defendant based solely on his or her supervisory position. See *Mitchell v. Maynard*, 80 F.3d 1433, 1441, (10th Cir. 1996) (stating supervisory status alone is insufficient to support liability under § 1983). Fourth, if Plaintiff's claims relate to the conditions of Plaintiff's current confinement, Plaintiff should seeks help from the prison contract attorneys in preparing initial pleadings. And, finally, Plaintiff is warned that litigants who have had three *in forma pauperis* cases dismissed as frivolous or meritless will be restricted from filing future lawsuits without prepaying fees.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that:

(1) Plaintiff shall within **THIRTY DAYS** show cause why his complaint should not be dismissed for failure to cure the deficiencies in his complaint.

(2) the Clerk's Office shall again mail Plaintiff a copy of the Pro Se Litigant Guide.

(3) if Plaintiff fails to timely cure the above deficiencies according to the instructions here this action will be dismissed without further notice.

(4) Plaintiff's motion for a time extension is **DENIED** as moot, (see Docket Entry # 20); Plaintiff has already had an extra forty-five days in which to file an amended complaint.

DATED this 5th day of May, 2010.

BY THE COURT:



CLARK WADDOUPS
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FUSION MULTISYSTEMS,

Plaintiffs,

vs.

DONALD G. BASILE,

Defendants.

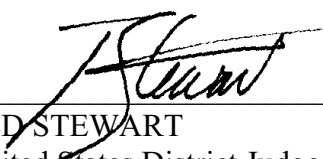
ORDER DIRECTING PARTIES TO
INFORM COURT OF ARBITRATION
STATUS

Case No. 2:09-CV-426 TS

In addition to the proceedings in this Court, the parties are also engaged in an Arbitration to resolve numerous state claims. The last status report regarding that Arbitration was filed by Plaintiff on November 12, 2009. The Court HEREBY DIRECTS each party to submit a status report on the status of the state claims pending in the Arbitration within ten (10) days of this Order.

DATED May 5, 2010.

BY THE COURT:



TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

KAY BETH DEEB et al,

Plaintiff,

vs.

PAYSON CITY, et al,

Defendant.

SCHEDULING ORDER

Case No. 2:09-cv-455TS

District Judge Ted Stewart

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel (docket #11). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | 1. PRELIMINARY MATTERS | <u>DATE</u> |
|---|--------------------|
| Nature of claim(s) and any affirmative defenses: | |
| a. Was Rule 26(f)(1) Conference held? | <u>04/08/2010</u> |
| b. Has Attorney Planning Meeting Form been submitted? | <u>04/13/2010</u> |
| c. Was 26(a)(1) initial disclosure completed? | <u>05/10/2010</u> |
-
- | 2. DISCOVERY LIMITATIONS | <u>NUMBER</u> |
|---|----------------------|
| a. Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. Maximum Interrogatories by any Party to any Party | <u>35</u> |
| e. Maximum requests for admissions by any Party to any Party | <u>per rule</u> |
| f. Maximum requests for production by any Party to any Party | <u>per rule</u> |

	<u>DATE</u>
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²	
a. Last Day to File Motion to Amend Pleadings	<u>04/30/2011</u>
b. Last Day to File Motion to Add Parties	<u>04/30/2011</u>
4. RULE 26(a)(2) REPORTS FROM EXPERTS³	
a. Plaintiff	<u>01/10/2011</u>
b. Defendant	<u>01/10/2011</u>
c. Counter Reports	<u>02/10/2011</u>
5. OTHER DEADLINES	
a. Discovery to be completed by:	
Fact discovery	<u>12/10/2010</u>
Expert discovery	<u>3/10/2011</u>
b. <i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	
c. Deadline for filing dispositive or potentially dispositive motions	<u>03/15/2011</u>
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a. Referral to Court-Annexed Mediation	
b. Referral to Court-Annexed Arbitration	
c. Evaluate case for Settlement/ADR on	
d. Settlement probability:	
7. TRIAL AND PREPARATION FOR TRIAL:	
a. Rule 26(a)(3) Pretrial Disclosures ⁴	
Plaintiffs	06/24/11
Defendants	07/08/11
b. Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)	

			<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before		07/22/11
d.	Settlement Conference ⁶ on or before		07/22/11
e.	Final Pretrial Conference	2:30 p.m.	08/08/11
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	i. Bench Trial		
	ii. Jury Trial	<u>Three days</u>	<u>8:30 a.m.</u> <u>08/22/11</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 4 day of May, 2010.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR 10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.
S:\IPT\2010\Deeb v. Payson City et al 209cv455TS 0504 tb.wpd

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

QUENTIN HURLICH,

Plaintiff,

v.

TOM PATTERSON et al.,

Defendants.

**ORDER DIRECTING SERVICE OF
PROCESS & DISPOSITIVE MOTION**

Case No. 2:09-CV-603 CW

District Judge Clark Waddoups

Plaintiff, Quentin Hurlich, an inmate at Central Utah Correctional Facility, filed this *pro se* civil rights suit. See 42 U.S.C.S. § 1983 (2010). Plaintiff was allowed to proceed *in forma pauperis*. See 28 *id.* § 1915.

Based on its review of the Second Amended Complaint, (see Docket Entry # 19), the Court concludes that official service of process is warranted. The United States Marshals Service (USMS) is directed to serve a properly issued summons and a copy of Plaintiff's Second Amended Complaint, along with this Order, upon the following Utah Department of Corrections (UDOC) defendant:

Tom Patterson

Once served, Defendant shall respond to the summons in one of the following ways:

(A) If Defendant wishes to assert the affirmative defense of Plaintiff's failure to exhaust administrative remedies in a grievance process, Defendant must,

(i) file an answer, within twenty days of service;

(ii) within sixty days of filing an answer, prepare and file a *Martinez* report limited to the exhaustion issue¹;

(iii) within sixty days of filing an answer, file a separate summary judgment motion, with a supporting memorandum; **and**

(iv) within sixty days of filing an answer, submit a proposed order for dismissing the case based upon

¹ See [*Martinez v. Aaron*, 570 F.2d 317 \(10th Cir. 1978\)](#) (approving district court's practice of ordering prison administration to prepare report to be included in pleadings in cases when prisoner has filed suit alleging constitutional violation against institution officials).

In [*Gee v. Estes*, 829 F.2d 1005 \(10th Cir. 1987\)](#), the Tenth Circuit explained the nature and function of a *Martinez* report, saying:

Under the *Martinez* procedure, the district judge or a United States magistrate [judge] to whom the matter has been referred will direct prison officials to respond in writing to the various allegations, supporting their response by affidavits and copies of internal disciplinary rules and reports. The purpose of the *Martinez* report is to ascertain whether there is a factual as well as a legal basis for the prisoner's claims. This, of course, will allow the court to dig beneath the conclusional allegations. These reports have proved useful to determine whether the case is so devoid of merit as to warrant dismissal without trial.

Id. at 1007.

Plaintiff's failure to exhaust, in word processing format, to: utdecf_prisonerlitigationunit@utd.uscourts.gov.

(B) If Defendant chooses to challenge the bare allegations of the complaint, Defendant shall, within twenty days of service, file a motion to dismiss based on Federal Rule of Civil Procedure 12(b)(6), and submit a proposed order for dismissing the case, in word processing format, to:

utdecf_prisonerlitigationunit@utd.uscourts.gov.

(C) If Defendant chooses not to rely on the defense of failure to exhaust and wishes to pierce the allegations of the complaint, Defendant must,

(i) file an answer, within twenty days of service;

(ii) within sixty days of filing an answer, prepare and file a *Martinez* report addressing the substance of the complaint;

(iii) within sixty days of filing an answer, file a separate summary judgment motion, with a supporting memorandum; **and**

(iv) within sixty days of filing an answer, submit a proposed order for dismissing the case based upon the summary judgment motion, in word processing format, to:

utdecf_prisonerlitigationunit@utd.uscourts.gov.

Plaintiff is notified that if Defendant moves for summary judgment Plaintiff may not rest upon the mere allegations in the complaint. Instead, as required by Federal Rule of Civil Procedure 56(e), to survive a motion for summary judgment Plaintiff must allege specific facts, admissible in evidence, showing that there is a genuine issue remaining for trial.²

ORDER

Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's motion for service of process is **GRANTED**, (see File Entry # 10), and:

(1) the USMS shall serve a completed summons, a copy of the Second Amended Complaint, (see File Entry # 19), and a copy of this Order upon the above-listed defendant;

(2) within twenty days of being served, Defendant must file an answer or motion to dismiss and proposed order, as outlined above;

² When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must--by affidavits or as otherwise provided in this rule--set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, should, if appropriate, be entered against that party.
Fed. R. Civ. P. 56(e) (2).

(3) if filing (on exhaustion or any other basis) a *Martinez* report **with** a summary judgment motion and proposed order, Defendant must do so within sixty days of filing his answer;

(4) if served with a *Martinez* report and a summary judgment motion or motion to dismiss, Plaintiff must file a response within thirty days; and,

(5) summary-judgment motion deadline is sixty days from filing of answer.

DATED this 5th day of May, 2010.

BY THE COURT:



CLARK WADDOUPS
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

QUENTIN HURLICH,

Plaintiff,

v.

TOM PATTERSON et al.,

Defendants.

**ORDER REQUIRING UTAH
DEPARTMENT OF CORRECTIONS TO
DISCLOSE INFORMATION TO U.S.
MARSHALS SERVICE**

Case No. 2:09-CV-603 CW

District Judge Clark Waddoups

The Court has directed the United States Marshals Service (USMS) to serve process in this case. See Fed. R. Civ. P. 4(c)(2). To do so, by statute, the USMS "shall command all necessary assistance to execute its duties." See 28 U.S.C.S. § 556(c) (2010).

The Complaint identifies the following Utah Department of Corrections (UDOC) employee as a defendant: **Tom Patterson.**

Under UDOC policy, service of process on current UDOC employees may be effected via authorized agent at the UDOC offices in Draper, Utah. If the named defendant is no longer employed by UDOC or UDOC is not authorized to accept service for him, more information must be obtained from UDOC to complete service.

Accordingly, **IT IS HEREBY ORDERED** that: If UDOC is unable to accept service of process for the defendant identified above,

UDOC shall disclose to the USMS any information in its records that may help in identifying, locating and completing service of process upon the named defendant. Such information shall include, but is not limited to, the defendant's full name and any known aliases, date of birth, Social Security number, driver's license number, all previous addresses, and last known address on file. The USMS shall take all necessary measures to safeguard any personal information provided by UDOC to ensure that it is not disclosed to anyone other than the USMS or Court officers.

DATED this 5th day of May, 2010.

BY THE COURT:



JUDGE CLARK WADDOUPS
United States District Court

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MICHAEL KEVIN VAN NAME,

Plaintiff,

v.

SARA DONALDSON et al.,

Defendants.

**ORDER DIRECTING SERVICE OF
PROCESS & DISPOSITIVE MOTION**

Case No. 2:09-CV-630 CW

District Judge Clark Waddoups

Plaintiff, Michael Kevin Van Name, an inmate at Central Utah Correctional Facility (CUCF), filed this *pro se* civil rights suit. See 42 U.S.C.S. § 1983 (2010). Plaintiff was allowed to proceed *in forma pauperis*. See 28 *id.* § 1915.

Based on its review of the Amended Complaint, (see Docket Entry # 18), the Court concludes that official service of process is warranted. The United States Marshals Service (USMS) is directed to serve a properly issued summons and a copy of Plaintiff's Amended Complaint, along with this Order, upon the following Utah Department of Corrections (UDOC) defendants:

Sara Donaldson, Medical Director, CUCF
Officer Johnson, female, CUCF
Nurse Steve, R.N., CUCF
Dr. Thurston, CUCF
Capt. Mel Coulter, CUCF
Hearing Officer Tom Anderson, UDOC

Once served, Defendants shall respond to the summons in one of the following ways:

(A) If Defendants wish to assert the affirmative defense of Plaintiff's failure to exhaust administrative remedies in a grievance process, Defendants must,

(i) file an answer, within twenty days of service;

(ii) within sixty days of filing an answer, prepare and file a *Martinez* report limited to the exhaustion issue¹;

(iii) within sixty days of filing an answer, file a separate summary judgment motion, with a supporting memorandum; **and**

(iv) within sixty days of filing an answer, submit a proposed order for dismissing the case based upon

¹ See [*Martinez v. Aaron*, 570 F.2d 317 \(10th Cir. 1978\)](#) (approving district court's practice of ordering prison administration to prepare report to be included in pleadings in cases when prisoner has filed suit alleging constitutional violation against institution officials).

In [*Gee v. Estes*, 829 F.2d 1005 \(10th Cir. 1987\)](#), the Tenth Circuit explained the nature and function of a *Martinez* report, saying:

Under the *Martinez* procedure, the district judge or a United States magistrate [judge] to whom the matter has been referred will direct prison officials to respond in writing to the various allegations, supporting their response by affidavits and copies of internal disciplinary rules and reports. The purpose of the *Martinez* report is to ascertain whether there is a factual as well as a legal basis for the prisoner's claims. This, of course, will allow the court to dig beneath the conclusional allegations. These reports have proved useful to determine whether the case is so devoid of merit as to warrant dismissal without trial.

Id. at 1007.

Plaintiff's failure to exhaust, in word processing format, to:

utdecf_prisonerlitigationunit@utd.uscourts.gov.

(B) If Defendants choose to challenge the bare allegations of the complaint, Defendants shall, within twenty days of service, file a motion to dismiss based on Federal Rule of Civil Procedure 12(b)(6), and submit a proposed order for dismissing the case, in word processing format, to:

utdecf_prisonerlitigationunit@utd.uscourts.gov.

(C) If Defendants choose not to rely on the defense of failure to exhaust and wish to pierce the allegations of the complaint, Defendants must,

(i) file an answer, within twenty days of service;

(ii) within sixty days of filing an answer, prepare and file a *Martinez* report addressing the substance of the complaint;

(iii) within sixty days of filing an answer, file a separate summary judgment motion, with a supporting memorandum; **and**

(iv) within sixty days of filing an answer, submit a proposed order for dismissing the case based upon the summary judgment motion, in word processing format, to:

utdecf_prisonerlitigationunit@utd.uscourts.gov.

Plaintiff is notified that if Defendants move for summary judgment Plaintiff may not rest upon the mere allegations in the complaint. Instead, as required by Federal Rule of Civil Procedure 56(e), to survive a motion for summary judgment Plaintiff must allege specific facts, admissible in evidence, showing that there is a genuine issue remaining for trial.²

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

(1) the USMS shall serve a completed summons, a copy of the Amended Complaint, (see Docket Entry # 18), and a copy of this Order upon the above-listed defendants;

(2) within twenty days of being served, Defendants must file an answer or motion to dismiss and proposed order, as outlined above;

(3) if filing (on exhaustion or any other basis) a *Martinez* report **with** a summary judgment motion and proposed order,

² When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must--by affidavits or as otherwise provided in this rule--set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, should, if appropriate, be entered against that party.
Fed. R. Civ. P. 56(e) (2).

Defendants must do so within sixty days of filing their answer(s);

(4) if served with a *Martinez* report and a summary judgment motion or motion to dismiss, Plaintiff must file a response within thirty days; and,

(5) summary-judgment motion deadline is sixty days from filing of answer.

DATED this 5th day of May, 2010.

BY THE COURT:



JUDGE CLARK WADDOUPS
United States District Court

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

MICHAEL KEVIN VAN NAME,

Plaintiff,

v.

SARA DONALDSON et al.,

Defendants.

**ORDER REQUIRING UTAH
DEPARTMENT OF CORRECTIONS TO
DISCLOSE INFORMATION TO U.S.
MARSHALS SERVICE**

Case No. 2:09-CV-630 CW

District Judge Clark Waddoups

The Court has directed the United States Marshals Service (USMS) to serve process in this case. See Fed. R. Civ. P. 4(c)(2). To do so, by statute, the USMS "shall command all necessary assistance to execute its duties." See 28 U.S.C.S. § 556(c) (2010).

The Complaint identifies the following Utah Department of Corrections (UDOC) employees as defendants:

**Sara Donaldson, Medical Director, CUCF
Officer Johnson, female, CUCF
Nurse Steve, R.N., CUCF
Dr. Thurston, CUCF
Capt. Mel Coulter, CUCF
Hearing Officer Tom Anderson, UDOC**

Under UDOC policy, service of process on current UDOC employees may be effected via authorized agent at the UDOC offices in Draper, Utah. If any of the named defendants are no longer employed by UDOC or UDOC is not authorized to accept service for

any of these individuals, more information must be obtained from UDOC to complete service.

Accordingly, **IT IS HEREBY ORDERED** that: If UDOC is unable to accept service of process for the defendants identified above, UDOC shall disclose to the USMS any information in its records that may help in identifying, locating and completing service of process upon the named defendants. Such information shall include, but is not limited to, the defendants' full names and any known aliases, dates of birth, Social Security numbers, driver's license numbers, all previous addresses, and last known addresses on file. The USMS shall take all necessary measures to safeguard any personal information provided by UDOC to ensure that it is not disclosed to anyone other than the USMS or Court officers.

DATED this 5th day of May, 2010.

BY THE COURT:



JUDGE CLARK WADDOUPS
United States District Court

Joseph G. Pia (9945)
joe.pia@ssparlaw.com
Arthur VanWagenen (11429)
arthur@ssparlaw.com
PIA ANDERSON DORIUS REYNARD & MOSS
299 South Main Street, Suite 2200
Salt Lake City, Utah 84111
Telephone (801) 961-1300
Facsimile (801) 961-1311

SO ORDERED

DALE A. KIMBALL
United States District Judge

Date May 4, 2010

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

Attorneys for Plaintiff

MAY - 5 2010

D. MARK JONES, CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

3 MARK ENTERTAINMENT, LLC, a
Delaware limited liability company

Plaintiff,

vs.

JAMES J. ABRAMS, an individual; KELLY
CRABB, an individual; and MORRISON
FOERSTER, LLP

Defendants.

RULE 41(a) NOTICE OF DISMISSAL WITH
PREJUDICE

Case No. 2:09-cv-780

Honorable Dale A. Kimball

NOTICE OF VOLUNTARY DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, 3 MARK
ENTERTAINMENT, LLC ("Plaintiff" or "3 Mark") by and through its attorneys, PIA
ANDERSON DORIUS REYNARD & MOSS, hereby dismisses with prejudice the above-

~~captioned action in its entirety as against defendants Morrison & Foerster LLP and Kelly Crabb~~
~~only. This notice of dismissal does not dismiss 3 Mark's claims, or any of them, against any~~
~~other party.~~

DATED this ___ day of May, 2010.

APPROVED AS TO FORM

PIA ANDERSON DORIUS REYNARD & MOSS, LLC

/s/ Joseph G. Pia

Joseph G. Pia
Attorneys for Plaintiff

STOEL RIVES

/s/ Kenneth Black

Ken Black
Attorneys for Defendants

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

TROY WEAVER,
Plaintiff,

vs.

CHEVROLET CORPORATION and JOHN &
JANE DOE CORPORATIONS,
Defendants.

ORDER DISMISSING CASE

Case No. 2:09-CV-841
Judge Dee Benson

On April 12, 2010, the Court issued an Order to Show Cause why this case should not be dismissed for failure to comply with the requirements of Federal Rule of Civil Procedure 4(m). The Court issued this order because more than 120 days had passed since the filing of the complaint, and plaintiff had failed to provide the Court with the requisite proof of service to demonstrate that the summons and complaint had been served on the defendants. Plaintiff was ordered to inform the Court of his intentions to proceed, if any, within fifteen days of the date the order was issued. Plaintiff has failed

to respond to the Court's Order. Accordingly, the Court **DISMISSES** the case **WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated this 5th day of May, 2010.

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive, flowing style.

Dee Benson
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**BENEFICIAL LIFE INSURANCE
COMPANY, a Utah corporation,**

Plaintiff,

v.

**CAROL JOSEPHER, SAMUEL
("SAM") NABORS, and DIANE PAPE,
as three individuals; and ESTATE OF
MARY ANNE NABORS, with DIANE
PAPE as alleged or actual Executor;
and SAM AND MARY ANNE NABORS
TRUST DTD 5/9/2000, an alleged or
actual trust with SAM NABORS as
alleged or actual trustee; and JOHN DOE
AND JANE DOE, if existing and
currently unknown;**

Defendants.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR MANDATORY
SETTLEMENT CONFERENCE**

Case No. 2:09cv850

District Judge Ted Stewart

Before the court is Beneficial Life Insurance Co.'s ("Beneficial Life") "Motion for Mandatory Pretrial Settlement Conference and for General Pretrial Conference Procedure Management of this Case."¹ After reviewing the motion, memoranda, and other materials submitted by the parties, the court has determined that a mandatory settlement conference is appropriate in this matter.

Therefore, the court **GRANTS** Beneficial Life's motion and rules as follows:

¹ Docket no. 28.

(1) All parties in this matter are ordered to attend a mandatory pretrial settlement conference pursuant to rule 16(a)(5) of the Federal Rules of Civil Procedure² and civil rule 16-3(a) of the United States District Court for the District of Utah Rules of Practice.³

(2) This case is referred to Magistrate Judge Paul M. Warner for settlement purposes pursuant to 28 U.S.C. § 636(b)(1).⁴ Magistrate Judge Warner's chambers has been notified of the referral and will be contacting all parties to schedule a settlement conference at a mutually convenient date and time.

(3) All parties are afforded the option of attending the settlement conference in person, or by representatives physically present, or by teleconference.⁵

(4) All deadlines in this matter are **STAYED** pending the outcome of the settlement conference.

IT IS SO ORDERED.

DATED this 3rd day of May, 2010.

BY THE COURT:



TED STEWART
United States District Court Judge

² See Fed. R. Civ. P. 16(a)(5).

³ See DUCivR 16-3(a).

⁴ See 28 U.S.C. § 636(b)(1); *see also* DUCivR 16-3(b).

⁵ See DUCivR 16-3(c).

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

GARY PHILLIPS,

Plaintiff,

v.

RICHARD GARDEN et al.,

Defendants.

**ORDER REQUIRING UTAH
DEPARTMENT OF CORRECTIONS TO
DISCLOSE INFORMATION TO U.S.
MARSHALS SERVICE**

Case No. 2:09-CV-934 DS

District Judge David Sam

The Court has directed the United States Marshals Service to serve process in this case. See Fed. R. Civ. P. 4(c)(2). To do so, by statute, the United States Marshal "shall command all necessary assistance to execute its duties." See 28 U.S.C.S. § 556(c) (2009).

The Complaint identifies the following Utah Department of Corrections (UDOC) employees as defendants:

**Dr. Kennon Tubbs
Joseph Coombs**


Under UDOC policy, service of process on current UDOC employees may be effected via authorized agent at the UDOC offices in Draper, Utah. If any of the named defendants are no longer employed by UDOC or UDOC is not authorized to accept service for any of these individuals, more information must be obtained from UDOC to complete service.

Accordingly, **IT IS HEREBY ORDERED** that: If UDOC is unable to accept service of process for the defendants identified above, UDOC shall disclose to the United States Marshals Service any information in its records that may help in identifying, locating and completing service of process upon the named defendants. Such information shall include, but is not limited to, the defendants' full names and any known aliases, dates of birth, Social Security numbers, driver's license numbers, all previous addresses, and last known addresses on file. The U.S. Marshal shall take all necessary measures to safeguard any personal information provided by UDOC to ensure that it is not disclosed to anyone other than the U.S. Marshals Service or Court officers.

IT IS SO ORDERED.

DATED this 4th day of May, 2010.

BY THE COURT:



DAVID SAM
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
2010 MAY -5 A 10:18
DISTRICT COURT
DISTRICT OF UTAH
NO. 2:09-CV-934 DS
BY: JERRY B. LEE
GARY PHILLIPS,)
Plaintiff,) **ORDER**
v.) Case No. 2:09-CV-934 DS
RICHARD GARDEN et al.,) District Judge David Sam
Defendants.)

On January 5, 2010, this Court ordered Defendants to file an answer and dispositive motion. Answers were due on January 25, 2010; however, because of their counsel's admitted neglect, Defendants did not file their answers until March 25, 2010, after Plaintiff moved for default judgment. Even then, counsel ignored the order to file a Martinez report and dispositive motion. To this day, counsel has continued to ignore that order. In the meantime, Plaintiff has filed three motions for appointed counsel, three motions to amend his complaint, and two motions for default judgment.

MOTIONS FOR APPOINTED COUNSEL

Plaintiff has no constitutional right to counsel.¹ However, the Court may in its discretion appoint counsel for indigent inmates.² "The burden is upon the applicant to convince the

¹See *Carper v. Deland*, 54 F.3d 613, 616 (10th Cir. 1995); *Bee v. Utah State Prison*, 823 F.2d 397, 399 (10th Cir. 1987).

²See 28 U.S.C.S. § 1915(e)(1) (2010); *Carper*, 54 F.3d at 617; *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991).

court that there is sufficient merit to his claim to warrant the appointment of counsel."³

When deciding whether to appoint counsel, the district court should consider a variety of factors, "including 'the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims.'"⁴

Considering the above factors, the Court concludes here that, at this time, Plaintiff's claims may not be colorable, the issues in this case are not complex, and Plaintiff is not at this time too incapacitated or unable to adequately function in pursuing this matter. Thus, the Court denies for now Plaintiff's motions for appointed counsel.

MOTIONS TO AMEND COMPLAINT

Plaintiff's first motion to amend his complaint seeks to add Dr. Kennon Tubbs as a defendant. Alleging inadequate medical care, Plaintiff asserts Dr. Tubbs refused to follow through on testing ordered by a university doctor. Plaintiff's second motion to amend his complaint seeks to correct the name of a defendant, "Joseph Coombs," whom Plaintiff had previously misidentified as "Jeffrey Coombs." A final motion to amend seeks to add exhibits to the complaint. These motions are granted.

³*McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).

⁴*Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quoting *Williams*, 926 F.2d at 996); accord *McCarthy*, 753 F.2d at 838-39.

ADDITIONAL DEFENDANTS TO BE SERVED

The Court concludes that official service of process is warranted on the above two defendants. The United States Marshals Service is directed to serve a properly issued summons and a copy of Plaintiff's Complaint, along with copies of this Order and Documents 22, 23, and 35, upon the following USP defendants:

Dr. Kennon Tubbs
Joseph Coombs

Once served, Defendants shall respond to the summons in one of the following ways:

(A) If Defendants wish to assert the affirmative defense of Plaintiff's failure to exhaust administrative remedies in a grievance process, Defendants must,

- (i) file an answer, within twenty days of service;
- (ii) within sixty days of filing an answer, prepare and file a *Martinez* report limited to the exhaustion issue⁵;

⁵ See Martinez v. Aaron, 570 F.2d 317 (10th Cir. 1978) (approving district court's practice of ordering prison administration to prepare report to be included in pleadings in cases when prisoner has filed suit alleging constitutional violation against institution officials).

In Gee v. Estes, 829 F.2d 1005 (10th Cir. 1987), the Tenth Circuit explained the nature and function of a *Martinez* report, saying:

Under the *Martinez* procedure, the district judge or a United States magistrate [judge] to whom the matter has been referred will direct prison officials to respond in writing to the various allegations, supporting their response by affidavits and copies of internal disciplinary rules and reports. The purpose of the *Martinez* report is to ascertain whether there is a factual as well as a legal basis for the prisoner's claims. This, of course, will allow the

(iii) within sixty days of filing an answer, file a separate summary judgment motion, with a supporting memorandum; **and**

(iv) within sixty days of filing an answer, submit a proposed order for dismissing the case based upon Plaintiff's failure to exhaust, in word processing format, to:

utdecf_prisonerlitigationunit@utd.uscourts.gov.

(B) If Defendants choose to challenge the bare allegations of the complaint, Defendants shall, within twenty days of service,

(i) file an answer; or

(ii) file a motion to dismiss based on Federal Rule of Civil Procedure 12(b)(6), and submit a proposed order for dismissing the case, in word processing format, to:

utdecf_prisonerlitigationunit@utd.uscourts.gov.

(C) If Defendants choose not to rely on the defense of failure to exhaust and wish to pierce the allegations of the complaint, Defendants must,

(i) file an answer, within twenty days of service;

(ii) within sixty days of filing an answer, prepare and

court to dig beneath the conclusional allegations. These reports have proved useful to determine whether the case is so devoid of merit as to warrant dismissal without trial.

Id. at 1007.

file a Martinez report addressing the substance of the complaint;

(iii) within sixty days of filing an answer, file a separate summary judgment motion, with a supporting memorandum; **and**

(iv) within sixty days of filing an answer, submit a proposed order for dismissing the case based upon the summary judgment motion, in word processing format, to: utdecf_prisonerlitigationunit@utd.uscourts.gov.

Plaintiff is notified that if Defendants move for summary judgment Plaintiff cannot rest upon the mere allegations in the complaint. Instead, as required by Federal Rule of Civil Procedure 56(e), to survive a motion for summary judgment Plaintiff must allege specific facts, admissible in evidence, showing that there is a genuine issue remaining for trial.⁶

IT IS THEREFORE ORDERED that:

(1) Plaintiff's motions for appointed counsel are **DENIED**, (see Docket Entry #s 12, 14, & 34); however, if, after the case

⁶ When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must--by affidavits or as otherwise provided in this rule--set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, should, if appropriate, be entered against that party.

Fed. R. Civ. P. 56(e) (2).

develops further, it appears that counsel may be needed or of specific help, the Court may ask an attorney to appear pro bono on Plaintiff's behalf.

(2) Plaintiff's motions to amend his complaint are **GRANTED** and the motions' text deemed incorporated into his complaint. (See Docket Entry #s 22, 23, & 35.)

(3) The United States Marshals Service shall serve a completed summons, a copy of the Complaint, and copies of this Order and documents 22, 23, and 35, upon Dr. Kennon Tubbs and Joseph Coombs.

(4) Within twenty days of being served, Tubbs and Coombs must file an answer or motion to dismiss and proposed order, as outlined above.

(5) If filing (on exhaustion or any other basis) a *Martinez* report **with** a summary judgment motion and proposed order, Tubbs and Coombs must do so within sixty days of filing their answer(s).

(6) If served by Tubbs and Coombs with a *Martinez* report and a summary judgment motion or motion to dismiss, Plaintiff must file a response within thirty days.

(7) Tubbs' and Coombs' summary-judgment motion deadline is sixty days from filing of answer.

(8) Plaintiff's motions for default judgment are **DENIED**. (See Docket Entry #s 24 & 33.) Thus far, Plaintiff has not shown


he has been unduly prejudiced by Defendants' delay; however, Defendants are now warned to delay no further.

(9) **The other defendants--who have already been served and have already filed their answers--must observe a summary-judgment-motion deadline of June 15, 2010.** If the Court does not receive a motion for summary judgment, with a Martinez report, by that date, this case will be immediately set for trial.

(10) Plaintiff is notified that if Defendants move for summary judgment Plaintiff cannot rest upon the complaint's allegations. Instead, as required by Federal Rule of Civil Procedure 56(e), to survive a motion for summary judgment, Plaintiff must allege specific facts, admissible in evidence, showing that there is a genuine issue remaining for trial.

DATED this 4th day of May, 2010.

BY THE COURT:



DAVID SAM
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ACORN COMPOSITE, Plaintiff, vs. SENECA, et al, Defendants.	MEMORANDUM DECISION AND ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT Case No. 2:09-CV-941 TS
--	---

This matter is before the Court on Plaintiff's Motion for Summary Judgment. For the reasons set forth below, the Court will deny the Motion.

I. Background

This dispute is based on a loan and guaranty. Plaintiff, Acorn Composite Corp., is the lender. The Borrowers, Sand Hollow Development Group LLC ("SHDG"), a Utah limited liability company and Senston Homes, Inc., a Utah corporation, are not parties to this dispute. Although there are three guarantors, David Wilkey, Thomas Seneca, and Troy Belliston, only Mr. Seneca and Mr. Belliston are parties to this action.

The following facts are undisputed. On January 22, 2007, Plaintiff entered into a loan

agreement with Borrowers for \$6,000,000 in connection with a real estate development project located in Florida. The project apparently consists of two separate pieces of property. Plaintiff alleges that in connection with the loan, Senston and SHDG executed and delivered a Promissory Note under which SHDG promised to pay seventy-five (75) percent and Senston promised to pay twenty-five (25) percent of the loan to Plaintiff.¹ To secure repayment of the loan, Mr. Wilkey and Defendants Seneca and Belliston signed a Personal Guaranty; Mr. Wilkey obligating himself to seventy-five (75) percent and Defendants Seneca and Belliston jointly and severally obligating themselves to the remaining twenty-five (25) percent. Mr. Roche, Plaintiff's principal, has a relationship other than that of lender-guarantor with Mr. Wilkey because Mr. Roche is the controlling interest holder of Sand Hollow to which Mr. Wilkey also holds interests.²

Defendants allege their twenty-five (25) percent obligation extends only to defaults of Senston, while Mr. Wilkey's seventy-five (75) percent responsibility corresponds to SHDG. Beginning September 25, 2009, Plaintiff sent Notices of Default to Defendants and Mr. Wilkey.³

The parties dispute that the Guaranty is an absolute guaranty that created an obligation on the part of the Guarantors legally independent of the obligation owing to Plaintiff from SDHG and Senston.

¹The Loan Agreement mentions only the Promissory Note, without any payment requirements attached on page 2, paragraph C(i). The payment obligations are mentioned on page 14, in section 6.14.4 entitled "Loan Repayment Requirements."

²Docket No. 16 at n. 2.

³Defendants argue the Notices of Default contain incorrect and unsupported demands that fail to properly interpret the language of the Loan Agreement and Personal Guaranty.

II. Standard of Review

Summary judgment is proper if the moving party can demonstrate that there are no genuine issues of material fact and it is entitled to judgment as a matter of law.⁴ The Court construes all facts and reasonable inferences in the light most favorable to the nonmoving party.⁵ In considering whether genuine issues of material fact exist, the Court determines whether a reasonable jury could return a verdict for the nonmoving party in the face of all the evidence presented.⁶ “When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials in his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial, if he does not so respond, summary judgment, if appropriate, shall be entered against him.”⁷

III. Discussion

In arguing that summary judgment is appropriate Plaintiff repeatedly refers to the “plain language of the contract.”⁸ Plaintiff seems to endorse Defendants’ position in its Answer that

⁴See FED. R. CIV. P. 56(c).

⁵*Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Wright v. Southwestern Bell Tel. Co.*, 925 F.2d 1288, 1292 (10th Cir. 1991).

⁶See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Clifton v. Craig*, 924 F.2d 182, 183 (10th Cir. 1991).

⁷FED. R. CIV. P. 56(e)(2).

⁸Docket No. 18 at 5, 6, 7, 9, 10.

“the documents speak for themselves.”⁹ According to these calls for interpretation, the Court finds genuine issues of material fact exist which make summary judgment inappropriate.

Plaintiff argues that the Guaranty executed by the Guarantors expressly created an obligation on the part of the Guarantors independent of the obligations owing to Plaintiff from SHDG and Senston. Plaintiff bases this argument on the following paragraph of the Personal Guaranty signed by Defendants and Mr. Wilkey:

The undersigned agree to remain fully bound on this Guaranty notwithstanding any extension, renewal, forbearance, modification, waiver, or release, discharge or substitution of any party, collateral or security for the Note or other debt, and the undersigned consent to and waive all notice, presentment, demand, protest and notice of protest or nonpayment of same. In the event of default, the Creditor may seek payment directly from the undersigned without need to proceed first against Borrowers and Guarantors or any other party or security.

Plaintiff argues that Defendants’ duty to pay under the Guaranty contract was triggered when the Borrowers failed to make monthly interest payments, failed to pay property taxes, failed to notify Plaintiff of all lot sales and failed to apply the proceeds received to the outstanding balance of the loan.

Defendants argue that Senston was not in breach of the Loan Agreement at the time the notice of default and complaint were filed so that Defendants had no duty under the Personal Guaranty. Defendants support this argument by making four sub-arguments. First, that the loan was not in default. Second, it was not Senston’s responsibility to either set up the interest reserve escrow account or to make all interest payments, and since Defendants are only personal

⁹*Id.* at 6.

guarantors of Senston, they were not liable regarding interest payments regardless of whether there was a breach regarding those payments or not. Third, that SDHG, not Senston, was liable for paying all property taxes; furthermore, although they were under no such obligation, Senston has at all times remained current on any tax obligations relating to the Senston property. Finally, Defendants argue that Senston has complied with their duty to provide information concerning the sale of lots.

Because the Court must view the facts and allegations in the light most favorable to the non-moving party, for the purposes of this Motion only, the Court must accept as true that Defendants were only responsible for Senston's obligations under the agreement.

Therefore, construing the contract according to its "plain meaning" as urged by Plaintiff, the Court finds Plaintiff is not entitled to a judgment as a matter of law. Section 3.2 of the Loan Agreement deals with the payment of taxes: "In addition to paying taxes and assessments at the Closing as may be required by Lender, SHCH¹⁰ shall pay when due, and before any interest or penalties shall accrue thereon, all federal, state, and local taxes, assessments, charges, levies, or indebtedness constituting a lien on the Loan Collateral."¹¹

As to Plaintiffs' argument that Defendants defaulted by failing to make interest payments according to section 6.14 of the Loan Agreement, the Court notes: section 6.14.1 states that SHDG is the developer and shall act as the Borrower's agent, on behalf of SHDG and Senston.¹²

¹⁰Although this entity is not discussed in the briefing, in the agreement it is recognized as Sand Hollow Commercial Holdings, LLC.

¹¹Docket No. 12 at 13.

¹²*Id.*

The plain language of this provision states that SHDG will act as an agent for Senston, and reiterates Senston's twenty-five (25) percent liability to pay back the loan. The remainder of the provision discusses the responsibilities of Borrower's agent SHDG.

Considering the plain language of sections 3.2 and 6.14 of the Loan Agreement, Plaintiff has not shown that the Defendants were in breach of their obligations and consequently that they were obligated to pay pursuant to the Guaranty. As to the proper interpretation of these two provisions, the parties have demonstrated that genuine issues of material fact exist. Therefore, summary judgment is inappropriate.

Even if the Court did not find summary judgment to be inappropriate based on the lack of clear evidence regarding a breach, the Court finds summary judgment would not be appropriate based on the Personal Guaranty alone due to the representations Defendants allege were made by Plaintiff to induce them to sign that Guaranty. Plaintiff argues any representations made prior to the agreement are inadmissible under the parol evidence rule.

"The [parol evidence] rule operates, in the absence of fraud or other invalidating causes, to exclude evidence of contemporaneous conversations, representations, or statements offered for the purpose of varying or adding to the terms of an *integrated* contract."¹³ "If a contract is integrated, parol evidence is admissible only to clarify ambiguous terms; it is not admissible to vary or contradict the clear and unambiguous terms of the contract."¹⁴ "[A]n integrated

¹³*Tangren Family Trust v. Tangren*, 182 P.3d 326, 330 (Utah 2008) (citing *Hall v. Process Instruments & Control, Inc.*, 890 P.2d 1024, 1026 (Utah 1995)).

¹⁴*Id.*

agreement [is] ‘a writing or writings constituting a final, expression of one of more terms of an agreement.’”¹⁵ “To determine whether a writing is an integration, a court must determine whether the parties adopted the writing “as the *final and complete* expression of their bargain.”¹⁶

Integration clauses . . . “are routinely incorporated in agreements in order to signal to the courts that the parties agree that the contract is to be considered completely integrated. A completely integrated agreement must be interpreted on its face, and thus the purpose and effect of including a merger clause is to preclude the subsequent introduction of evidence of preliminary negotiations or of side agreements in a proceeding in which a court interprets the document.”¹⁷

There is a rebuttable presumption that a writing which on its face appears to be an integrated agreement is what it appears to be.¹⁸ “A non-integrated contract may exist where the terms are not ambiguous, but the nature of the agreement itself is unclear.”¹⁹ “[C]laims of fraudulent inducement may be supported by parole evidence.”²⁰

Section 6.11 of the Loan Agreement deals directly with the consistency of documents and is so titled. It states:

The other Loan Documents are not intended to supercede the provisions of this Agreement, but shall be construed as supplemental thereto. In the event of any inconsistency between the provisions of the other Loan Documents and this

¹⁵*Id.* (quoting Restatement (Second) of Contracts § 209 (1981)).

¹⁶*Id.* (quoting *Bullfrog Marina, Inc. v. Lentz*, 501 P.2d 266, 270 (Utah 1972)).

¹⁷*Id.* (quoting *Ford v. Am. Express Fin. Advisors, Inc.*, 98 P.3d 15 (Utah 2004)).

¹⁸*Becker v. HSA/Wexford Bancgroup, L.L.C.*, 157 F.Supp.2d 1243, 1251 (D. Utah 2001).

¹⁹*Webb v. R.O.A. General, Inc.*, 804 P.2d 547, 552 (Utah Ct. App. 1991).

²⁰*The Burgess Co. v. Riverside Mobile Home Park, L.L.C.*, 2006 WL 2522193, at *1 (August 31, 2006).

Agreement, or in the even the provisions in the other Loan Documents are not as complete or clear as this Agreement, this Agreement shall control. This Agreement shall survive the execution, recording, and filing of the Loan Documents.²¹

Section 6.13 of the Loan Agreement is the integration clause and states that the Agreement is the entire agreement, but the other Loan Documents “used in conjunction with the Loan shall be valid and enforceable according to their provisions.”²²

The Personal Guaranty is not contained within the Loan Agreement, does not include an integration clause and this “other” Loan Document, according to the plain language, should be enforced according to its own provisions. Moreover, the Court finds no language either in the Loan Agreement or Personal Guaranty that clearly states that the language from one agreement is incorporated and governs the other agreement.

Given the alleged statements by Mr. Rocher to Defendants, “Hey, I’m better than a bank, because I will never foreclose on you on the Note” and that they “need not have any concern about being held personally liable”²³ because the agreement was just a formality,²⁴ and because Plaintiff’s principal also holds interest in SHDG which in essence means that he was guarantying a loan to himself, the Court finds there are genuine issues of material fact in dispute regarding the intent and meaning of the agreements. Consequently summary judgment is inappropriate.

²¹*Id.* at 18.

²²*Id.*

²³Docket No. 16 at 3, 8.

²⁴*Id.* at 8.

IV. Conclusion

Based on the above, it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment (Docket No. 10) is DENIED.

The hearing set for Friday, May 7, 2010 is hereby STRICKEN.

DATED May 5, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", is written over a horizontal line.

TED STEWART
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>WELLS FARGO EQUIPMENT FINANCE, INC.,</p> <p>Plaintiff,</p> <p>vs.</p> <p>HARD ROCK EXCAVATION, INC.; and CLINT W. HARDMAN,</p> <p>Defendants.</p>	<p>MEMORANDUM DECISION AND ORDER DENYING PLAINTIFF'S MOTION FOR ISSUANCE OF WRIT OF REPLEVIN</p> <p>Case No. 2:09- CV-1030 TS</p>
--	---

Plaintiff seeks a Prejudgment Write of Replevin on a Volvo Hydraulic Excavator.
Defendants have failed to answer.

I. Factual Background

The following facts were established in the Owens Declaration and other supporting exhibits filed concurrently with the Motion. Ms. Owens is employed by Wells Fargo Equipment Finance, Inc., as a Loan Adjuster.

On October 14, 2005 Defendant Hard Rock entered into a Security Agreement–Conditional Sale Contract borrowing \$180,709.80 from Arnold Machinery

Company. Under this agreement, Hard Rock granted Arnold a security interest in the Volvo EC290BLC Hydraulic Excavator at issue. The security interest in the Excavator was perfected on October 18, 2005, by the filing of a UCC-1 Financing Statement with the Utah Department of Commerce.

On September 27, 2005, Arnold assigned its rights under the October 2005 Security Agreement to the CIT Group/Equipment Financing. On June 29, 2007, the CIT Group and Wells Fargo entered into an Asset and Purchase Agreement by which CIT assigned its rights under the Hard Rock Agreement to Wells Fargo. In December 2007, this change was filed with the Utah Department of Commerce.

Hard Rock has failed to make the required payments under the Agreements\ which constitutes a default under Section 11 of the Agreement. However, it is still in possession of the Excavator.

Section 12 of the October 2005 Agreement states in pertinent part: "So long as any obligations are owed by Buyer to Seller hereunder, Seller shall have all rights and remedies provided by the Security Agreement and provided a secured party under the Uniform Commercial Code and any other applicable law."¹ Hard Rock was put on notice of its default under the October 2005 agreement by letter dated October 28, 2008. The Excavator is currently in the possession of Hard Rock, at a location in Lehi, Utah.

¹Declaration of Rachel C. Owens, Docket No. 10. Ex 2.

II. Discussion

Federal Rule of Civil Procedure 64 makes any remedy for repossession available in the state in which the court sits applicable in any action.² The Utah Rules of Civil Procedure 64, 64A, and 64B allow replevin when the item to be repossessed is not earnings or exempt from execution; the writ is not sought to hinder or delay a creditor; the repossession is not sought for a tax, assessment, or fine; Plaintiff has a substantial likelihood of prevailing on the merits of its underlying claim; and there is probable cause that Plaintiff may lose its remedy and suffer irreparable harm unless a writ is issued.³

Although Plaintiff has demonstrated most of the required elements for a prejudgment writ, it has failed to show why the failure to grant the writ will result in irreparable harm, a material decline in value, or loss of its remedy in whole or in part. It is therefore

ORDERED that Plaintiff's Motion for Issuance of Writ of Replevin is DENIED.

DATED May 5, 2010.

BY THE COURT:



TED STEWART
United States District Judge

²Fed. R. Civ. P. 64.

³Utah Rules of Civil Procedure 64, 64A, and 64B.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN REESE, DOUGLAS KOPECKY,
MINDI ELMER, ED DAYTON, CHRIS
DALLIMORE, SHAWN PORTER, on behalf
of themselves and all others similarly
situated,

Plaintiffs,

vs.

CITI MORTGAGE, INC., TIMOTHY F.
GEITHNER, U.S. Secretary of the Treasury,
U.S. DEPARTMENT OF THE TREASURY,
et al.,

Defendants.

ORDER DISMISSING CASE

Case No. 2:09-CV-1031
Judge Dee Benson

On April 12, 2010, the Court issued an Order to Show Cause why this case should not be dismissed for failure to comply with the requirements of Federal Rule of Civil Procedure 4(m). The Court issued this order because more than 120 days had passed since the filing of the complaint, and plaintiff had failed to provide the Court with the requisite proof of service to demonstrate that the summons and complaint had been served on the defendants. Plaintiff was ordered to inform the Court of his intentions to proceed, if any, within fifteen days of the date the order was issued. Plaintiff has failed to respond to the Court's Order. Accordingly, the Court

DISMISSES the case **WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated this 5th day of May, 2010.

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive, flowing style.

Dee Benson
United States District Judge

SCOTT D. CHENEY (6198)
Assistant Utah Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
Attorneys for Defendants
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100
Facsimile: (801) 366-0101
e-mail: scheney@utah.gov

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH CENTRAL DIVISION

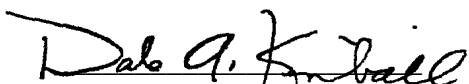
CARL STANLEY FLEMING, Plaintiff, v. STEVE TURLEY., et al., Defendants.	ORDER EXTENDING TIME TO RESPOND TO PLAINTIFF'S COMPLAINT Case No. 2:09cv01038 Judge Dale A. Kimball
--	--

Based on Defendants' Motion For A Second Enlargement of Time to Respond to Plaintiff's Complaint, the Court hereby enters the following order:

Defendants' motion is GRANTED. Defendants Mel Coulter, Darwin Johnson, Troy Kennedy, Randell McConnell, Clayton James, Caseworker George and Anna Lee Carlson shall file an answer or other response to plaintiff's *Complaint* on or before June 11, 2010.

DATED this 5th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

DALE A. KIMBALL

United States District Court Judge

Romaine C. Marshall (9654)
HOLLAND & HART LLP
222 S. Main Street, Suite 2200
Salt Lake City, Utah 84101
Telephone: (801) 799-5800
Facsimile: (801) 799-5700

Donald A. Degnan (appearing *pro hac vice*)
HOLLAND & HART LLP
1800 Broadway, Suite 300
Boulder, Colorado 80302
Telephone: (303) 473-2724

Attorneys for Defendant NeverBlue Media, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DAZZLESMILE, LLC, a Utah limited liability
company, and OPTIMAL HEALTH
SCIENCE, LLC, a Utah limited liability
company,

Plaintiffs,

vs.

EPIC ADVERTISING, INC., a purported
Delaware corporation AKA AZOOGLE.COM,
INC., AKA AZOOGLEADS US INC., and
AKA EPIC/AZOOGLE; AZOOGLE.COM,
INC., a Delaware corporation;
AZOOGLEADS US, INC., a non-public
Delaware corporation; FAREND SERVICES
LIMITED, a Cyprus registered company;
JESSE DAVID WILLMS, an individual;
1021018 ALBERTA LTD, a Numbered
Alberta Canadian Corporation AKA JUST
THINK MEDIA; ATLAST HOLDINGS,
INC., a Colorado corporation, d/b/a ATLAST
FULFILLMENT; NEVERBLUE MEDIA,
INC., a Canadian corporation; GOOGLE,
INC., a Delaware corporation; YAHOO! INC.,

ORDER GRANTING STIPULATED
MOTION FOR EXTENSION OF TIME TO
ANSWER PLAINTIFFS' COMPLAINT

Civil Action No. 2:09-CV-1043
Magistrate Judge Paul M. Warner

a Delaware corporation; MICROSOFT CORPORATION, a Washington corporation; and DOES 1-10,

Defendants.

The Court having reviewed the Stipulated Motion for Extension of Time to Answer Plaintiffs' Complaint filed by Defendant NeverBlue Media, Inc. ("NeverBlue"), hereby GRANTS the same. NeverBlue shall have until May 24, 2010 to file an Answer to Plaintiffs' Complaint.

DATED May 5th, 2010.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Paul M. Warner", written in black ink.

Magistrate Judge Paul M. Warner

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

DAZZLESMILE, LLC, a Utah limited liability company, and OPTIMAL HEALTH SCIENCE, LLC, a Utah limited liability company,

Plaintiffs,

v.

EPIC ADVERTISING, INC., a purported Delaware corporation AKA AZOOGLE.COM, INC., AKA AZOOGLEADS US INC., and AKA EPIC/AZOOGLE; AZOOGLE.COM, INC., a Delaware corporation; AZOOGLEADS US, INC., a non-public Delaware corporation; FAREND SERVICES LIMITED, a Cyprus registered company; JESSE DAVID WILLMS, an individual; 1021018 ALBERTA LTD, a Numbered Alberta Canadian Corporation AKA JUST THINK MEDIA; ATLAST HOLDINGS, INC., a Colorado corporation, d/b/a ATLAST FULFILLMENT; GOOGLE, INC., a Delaware corporation, YAHOO! INC., a Delaware corporation; MICROSOFT CORPORATION, a Washington corporation; and DOES 1-10,

Defendants.

_____ /

Case No. 2:09-cv-01043-PMW

**ORDER EXTENDING TIME FOR
DEFENDANTS FAREND SERVICES
LIMITED, JESSE DAVID WILLMS AND
1021018 ALBERTA LTD. TO RESPOND
TO FIRST AMENDED COMPLAINT**

Magistrate Judge Paul M. Warner

Plaintiffs Dazzlesmile LLC and Optimal Health Science LLC and Defendants Farend Services Limited, Jesse David Willms and 1021018 Alberta Ltd. Stipulation to Extend Time to Respond to First Amended Complaint was presented to this Court on May 5, 2010. Good cause appearing therefore:

IT IS HEREBY ORDERED that the Stipulation is granted.

IT IS HEREBY FURTHER ORDERED that Defendants Farend Services Limited, Jesse David Willms and 1021018 Alberta Ltd. response to the first amended complaint in this action shall be filed and served by May 21, 2010.

IT IS SO ORDERED.

Dated this 5th day of May, 2010.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", is written over a horizontal line.

PAUL M. WARNER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

ASTONISH RESULTS, LP,

Plaintiff,

vs.

EXPRESS INSURANCE, LLC,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:09-CV-1074

District Judge Clark Waddoups

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel (docket #11). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for May 19, 2010, at 11:00 a.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | 1. | PRELIMINARY MATTERS | <u>DATE</u> |
|-----------|--|--------------------|
| | Nature of claim(s) and any affirmative defenses: | |
| a. | Was Rule 26(f)(1) Conference held? | <u>04/14/10</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>04/22/10</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>05/15/10</u> |
-
- | 2. | DISCOVERY LIMITATIONS | <u>NUMBER</u> |
|-----------|--|----------------------|
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>25</u> |

- f. Maximum requests for production by any Party to any Party *no limit*
DATE
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²
- a. Last Day to File Motion to Amend Pleadings *07/11/10*
- b. Last Day to File Motion to Add Parties *07/11/10*
4. RULE 26(a)(2) REPORTS FROM EXPERTS³
- a. Plaintiff *11/08/10*
- b. Defendant *12/08/10*
- c. Counter Reports *01/10/11*
5. OTHER DEADLINES
- a. Discovery to be completed by:
- Fact discovery *10/31/10*
- Expert discovery *03/11/11*
- b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)
- c. Deadline for filing dispositive or potentially dispositive motions *03/25/11*
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION
- a. Referral to Court-Annexed Mediation
- b. Referral to Court-Annexed Arbitration
- c. Evaluate case for Settlement/ADR on
- d. Settlement probability:
7. TRIAL AND PREPARATION FOR TRIAL:
- a. Rule 26(a)(3) Pretrial Disclosures⁴
- Plaintiffs **07/08/11**
- Defendants **07/22/11**
- b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

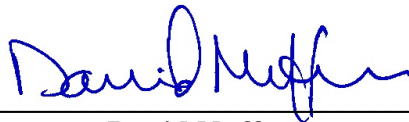
			<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before		08/05/11
d.	Settlement Conference ⁶ on or before		08/05/11
e.	Final Pretrial Conference	2:30 p.m.	08/23/11
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	i. Bench Trial		
	ii. Jury Trial	<u>Four days</u>	<u>8:30 a.m.</u> <u>09/06/11</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 4 day of May, 2010.

BY THE COURT:



**David Nuffer
U.S. Magistrate Judge**

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR 10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2010\Astonish Results v. Express Insurance Co. 209cv1074CW 0504 tb.wpd

DAVID R. HALL (9225)
PARSONS BEHLE & LATIMER
201 South Main Street, Ste. 1800
Salt Lake City, UT 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
dhall@parsonsbehle.com

Attorneys for Richardson Brands Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

DYNAMIC CONFECTIONS, INC.

Plaintiffs,

v.

RICHARDSON BRANDS COMPANY,

Defendant.

Case No. 2:09-cv-1124 DN

**ORDER GRANTING STIPULATED
MOTION FOR EXTENSION OF
TIME TO ANSWER OR
OTHERWISE RESPOND TO FIRST
AMENDED COMPLAINT**

Based upon the Stipulated Motion for Extension of Time to Answer or Otherwise Respond to First Amended Complaint, and good cause appearing therefore, IT IS HEREBY ORDERED:

Defendant is granted an extension until Wednesday, May 26, 2010 to file its answer or other responsive motion or pleading to Plaintiff's First Amended Complaint.

DATED this 4th day of May, 2010.

BY THE COURT:



DAVID NUFFER
UNITED STATES DISTRICT COURT
MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

Jose Santos Zepeda-Gonzalez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX2:10-CR-00114-001 DAK

USM Number: 16831-081

Benjamin McMurray

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment.

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. § 1326	Reentry of a Previously Removed Alien	9/24/2009	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/3/2010

Date of Imposition of Judgment

Dale A. Kimball

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

Date

May 4, 2010

DEFENDANT: Jose Santos Zepeda-Gonzalez
CASE NUMBER: DUTX2:10-CR-00114-001 DAK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

9 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed in a federal correctional institution in California to facilitate family visitation.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jose Santos Zepeda-Gonzalez
CASE NUMBER: DUTX2:10-CR-00114-001 DAK

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
12 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jose Santos Zepeda-Gonzalez
CASE NUMBER: DUTX2:10-CR-00114-001 DAK

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the U.S. Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the U.S. Probation Office in the District of Utah within 72 hours of arrival in the United States.

CRIMINAL MONETARY PENALTIES

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jose Santos Zepeda-Gonzalez
CASE NUMBER: DUTX2:10-CR-00114-001 DAK

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

Martin Santos-Guerrero

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX2:10CR000127-001-DS

USM Number: 30846-013

Natalie Benson

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. §1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/29/2010

Date of Imposition of Judgment

David Sam
Signature of Judge

Hon. David Sam
Name of Judge

District Court Judge
Title of Judge

May 4, 2010
Date

DEFENDANT: Martin Santos-Guerrero
CASE NUMBER: DUTX2:10CR000127-001-DS

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

46 months. Upon completion on imprisonment, the defendant is remanded to BICE for deportation proceedings.

☒ The court makes the following recommendations to the Bureau of Prisons:

that the defendant be afforded any educational and/or vocational opportunities available.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Martin Santos-Guerrero
CASE NUMBER: DUTX2:10CR000127-001-DS

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Martin Santos-Guerrero

CASE NUMBER: DUTX2:10CR000127-001-DS

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he/she is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

CASE NUMBER: DUTX2:10CR000127-001-DS

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Martin Santos-Guerrero
CASE NUMBER: DUTX2:10CR000127-001-DS

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

Jose Luis Sandate-Montana

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX2:10CR000132-001-CW

USM Number: 30514-018

Natalie A. Benson

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. §1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

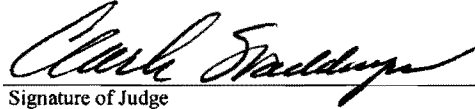
☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/4/2010

Date of Imposition of Judgment



Signature of Judge

Hon. Clark Waddoups

Name of Judge

District Court Judge

Title of Judge

Date

5/5/2010

DEFENDANT: Jose Luis Sandate-Montana
CASE NUMBER: DUTX2:10CR132-001-CW

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

20 months. Upon completion of imprisonment, the defendant is remanded to BICE for deportation proceedings.

☒ The court makes the following recommendations to the Bureau of Prisons:

that the defendant be imprisoned in Wisconsin or somewhere nearby; that the defendant receive alcohol treatment to the extent available.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jose Luis Sandate-Montana
CASE NUMBER: DUTX2:10CR132-001-CW

Judgment—Page 3 of 6

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jose Luis Sandate-Montana
CASE NUMBER: DUTX2:10CR132-001-CW

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

CRIMINAL MONETARY PENALTIES

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jose Luis Sandate-Montana
CASE NUMBER: DUTX2:10CR132-001-CW

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

Gibran Saldivar-Martinez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX2:10CR000159-001-CW

USM Number: 16860-081

Carlos A. Garcia

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. §1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/4/2010

Date of Imposition of Judgment

Clark Waddoups
Signature of Judge

Hon. Clark Waddoups

Name of Judge

District Court Judge

Title of Judge

Date

5/5/2010

DEFENDANT: Gibran Saldivar-Martinez
CASE NUMBER: DUTX2:10CR159-001-CW

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

15 months. Upon completion of imprisonment, the defendant is remanded to BICE for deportation proceedings.

☒ The court makes the following recommendations to the Bureau of Prisons:

that the defendant be imprisoned at a facility in Arizona.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Gibran Saldivar-Martinez
CASE NUMBER: DUTX2:10CR159-001-CW

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Gibran Saldivar-Martinez
CASE NUMBER: DUTX2:10CR159-001-CW

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

CRIMINAL MONETARY PENALTIES

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Gibran Saldivar-Martinez
CASE NUMBER: DUTX2:10CR159-001-CW

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

U.S. DISTRICT COURT

2010 MAY -5 A 7:12

016700100 0004

ST. JAMES CATH.

ORDER GRANTING
DEFENDANT'S MOTION TO
CONTINUE TRIAL, PRE TRIAL
CONFERENCE, MOTIONS AND
SCHEDULING ORDER

Case No. 2:10-cr-00290-TS

) THE HONORABLE TED STEWART,
) DISTRICT COURT JUDGE

THE HONORABLE PAUL M. WARNER,
MAGISTRATE JUDGE

THE HONORABLE PAUL M. WARNER,
MAGISTRATE JUDGE

1

FINDINGS

1. The issues presented in the above captioned matter are such that failing to grant a continuance would be likely to make a continuation of such proceeding (the trial) impossible, or result in a miscarriage of justice; and,

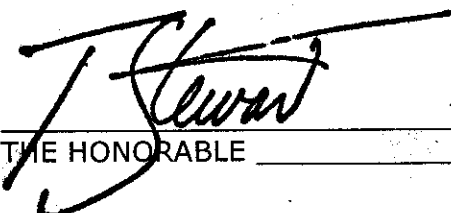
2. The case is presently sufficiently complex due to the nature of the prosecution thereof, considered together with the recent appearance by defense counsel, the status of discovery, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

3. The Defendant's waiver of his speedy trial rights is made knowingly, intelligently and voluntarily upon the advice of counsel, and is hereby accepted by the Court.

ORDER

Accordingly, for the reasons set forth above, and in the interests of justice, the Defendant's Motion to Continue the Trial is hereby GRANTED. This matter shall come before this Court on the 16th day of June, 2010 at the hour of 2:00 p.m. for a status/pre trial conference.

BY THE COURT THIS 4th DAY OF May, 2010.



THE HONORABLE _____

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

Jesus De Alba

Case Number: *2:10-cr-00334-TS*

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I find that the defendant is not a flight risk and that the detention of the defendant pending trial in this case.

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

MAY - 3 2010

D. MARK JONES, CLERK
BY *[Signature]* DEPUTY CLERK

Part I - Findings of Fact

(1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is

- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in

☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses

(2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense

(3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).

(4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

(1) There is probable cause to believe that the defendant has committed an offense

- ☐ for which a maximum term of imprisonment of ten years or more prescribed in
- ☐ under 18 U.S.C. §924(c)

(2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

☒ (1) There is a serious risk that the defendant will not appear.

☒ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

- Defendants prior criminal record including felony narcotics
- The substantial prison incarceration defendant faces if convicted

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: *5-3-10*

[Signature]

Signature of Judicial Officer

MAGISTRATE JUDGE ROBERT T. BRAITHWAITE

Name and Title of Judicial Officer

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

Tomas Sanchez-Paulina

Case Number:

2:10-cr-00335-TS

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAY - 3 2010

D. MARK JONES, CLERK

BY

- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses

- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☒ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

ICE DETAINER

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated:

5-3-10

R T Braithwaite

Signature of Judicial Officer

MAGISTRATE JUDGE ROBERT T. BRAITHWAITE

Name and Title of Judicial Officer

MAY - 3 2010

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION
BY D. MARK JONES, CLERK
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

Tomas Sanchez-Paulino

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:10-cr-00335-TS

The above-entitled action came on for pretrial conference May 3, 2010, before Robert T. Braithwaite, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for July 7, 2010, (2 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Ted Stewart by July 1, 2010 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

3. Pretrial motions are to be filed by: June 16, 2010 at 5:00

p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by **June 23, 2010**. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **In custody**.

7. All exhibits will be premarked before Judge Ted Stewart's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes X No Language Spanish

DATED this 3 day of May, 2010.

BY THE COURT:



Robert T. Braithwaite
Magistrate Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

MAY - 3 2010

D. MARK JONES, CLERK

DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Leonel Gomez-Torres,

Defendant.

: Case No. 2:10-cr-00336-TS
:
: ORDER SETTING DISPOSITION
: DATE AND EXCLUDING TIME
: FROM SPEEDY TRIAL
: COMPUTATION
:

This matter came before this Court on May 3, 2010 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Doug Terry . The United States was represented by Assistant United States Attorney Paul Kohler. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court **ORDERS** that this matter be scheduled for **July 6, 2010 at 10:30 a.m.** before **Judge Ted Stewart**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel

for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **May 3, 2010** (the date of this appearance), and **July 6, 2010** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 3rd day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'R. Braithwaite', is written over a horizontal line.

Robert T. Braithwaite
United States Magistrate Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAY 3 2010

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

D. MARK JONES, CLERK

DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Jose Cifuentes-Flores,

Defendant.

: Case No. 2:10-cr-00337-TS
:
: ORDER SETTING DISPOSITION
: DATE AND EXCLUDING TIME
: FROM SPEEDY TRIAL
: COMPUTATION
:

This matter came before this Court on May 3, 2010 for the purpose of an initial appearance and arraignment. The defendant, who was present, was represented by Jay Winward . The United States was represented by Assistant United States Attorney Paul Kohler. This defendant has been charged with Illegal Reentry of a Previously Removed Alien in violation of 8 U.S.C. § 1326.

The United States Attorney's Office for the District of Utah has indicated that this defendant meets the eligibility requirements for the "fast-track" benefit, namely, an additional reduction in his or her sentence. However, in order to derive the benefit of this reduction, the defendant must agree to certain conditions as set forth in the fast-track program.

This defendant did not, and is not required at this hearing, to enter a plea of guilty, nor is he/she required at this hearing to commit to enter a plea of guilty. However, the defendant, through counsel, has indicated that he/she wishes to preserve his/her opportunity to participate in the program, and has consented, in writing, to the initiation and disclosure to the Court and the parties of a pre-plea disposition report.

The defendant has requested that this Court set this matter for a status/change of plea hearing date approximately 55 days from the date of this initial appearance and arraignment. Counsel for the defendant has indicated that such will afford counsel the time necessary to meaningfully explain to the defendant the details of the fast-track program and its potential application to this case. Additionally, this time will provide the defendant an adequate opportunity to make an informed decision whether to participate in the program. Therefore, based upon the reasons set forth above, this Court **ORDERS** that this matter be scheduled for **July 6, 2010 at 10:00 a.m.** before **Judge Ted Stewart**.

This Court finds, pursuant to 18 U.S.C. § 3161(h)(1)(I), that this period of delay is a result of the necessary consideration by the Court and parties of this proposed plea agreement. Additionally, this Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the ends of justice outweigh the best interest of the public and defendant in a speedy trial and that, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that the failure to grant such a continuance would deny counsel

for the defendant and the defendant the reasonable time necessary for effective preparation and for discussion and deliberation of the proposed plea agreement, taking into account the exercise of due diligence, and would therefore result in a miscarriage of justice. Based on the foregoing, IT IS HEREBY ORDERED that, pursuant to 18 U.S.C. § 3161(h), all time between **May 3, 2010** (the date of this appearance), and **July 6, 2010** (the date of the scheduled status hearing) is excluded from computing the time within which the trial of this matter must commence.

DATED this 3rd day of May, 2010.

BY THE COURT:

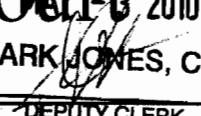
A handwritten signature in black ink, appearing to read 'RTB', is written over a horizontal line.

Robert T. Braithwaite
United States Magistrate Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

United States District Court

CENTRAL DISTRICT OF UTAH

2010
D. MARK JONES, CLERK
BY  DEPUTY CLERK

UNITED STATES OF AMERICA
V.

ORDER OF TEMPORARY DETENTION
PENDING HEARING RE:

Travis Trost Braun

Case Number: *2:10-cr-00345-TS*

Upon motion of the United States of America, it is **ORDERED** that a
detention hearing is set for *May 10, 2010* * at *1:00 p.m.*
before Magistrate Judge Robert T. Braithwaite

206 West Tabernacle, St. George, UT; Courtroom 2B

Pending this hearing, the defendant shall be held in the custody of (the United States Marshal)
and produced for hearing.

Other Custodial Official

Date: *5-3-10*


Judicial Officer

*If not held immediately upon defendant's first appearance, the hearing may be continued for up to three days upon motion of the Government, or up to five days upon motion of the defendant. 18 U.S.C. §3142(f)(2).

A hearing is required whenever the conditions set forth in U.S.C. §3142(f) are present. Subsection (1) sets forth the grounds that may be asserted only by the attorney for the Government; subsection (2) states that a hearing is mandated upon the motion of the attorney for the Government or upon the judicial officer's own motion if there is a serious risk that the defendant (a) will flee or (b) will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES of AMERICA,

Plaintiff,

v.

MILTON BORJAS,

Defendant.

FINDINGS

Case No.2:10-MJ-108 BCW

Case No. 2:10cr00360-001 DB

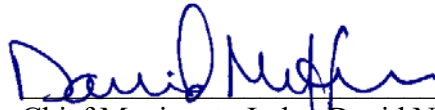
At the hearing held May 4, 2010, the defendant was ordered released based on the following findings. The presumption of detention is overcome by the following facts:

1. The defendant is a long time legal resident of the United States, having lived here since 1989.
2. He has been married 19 years.
3. His children ages 19, 16, 14, and 7 were all born in the United States.
4. He has a legal permanent resident alien card.
5. The defendant's wife traveled to the hearing with documentation to support employment status and income.
6. The defendant owns a home in which he has made substantial investment and due to his personal labor on the home, with his children and wife, has the need to finish the remodeling and re-sale of the home
7. The defendant is engaged in two legitimate and registered businesses, home painting and maintenance and buying, restoring and selling cars. His wife and children assist in this business.
8. The defendant and his family are dependent on his personal labor for support and these means of obtaining income require his continued presence in his residential area.
9. His home is subject to pending foreclosure by being 7 months delinquent but also to pending foreclosure relief that he will lose if he were to flee the country.

10. His ties with Honduras are not significant. The only recent travel to Honduras was when his father died.
11. The defendant was a minor player in the alleged incident. He was not driving the car, had to be given instructions on how to open the compartment with the drugs from the co-defendant and was not in possession of the firearm.
12. By the date of the arraignment (currently scheduled to commence Thursday, May 13, 2010 before Magistrate Judge Samuel Alba), a visit from Oregon Pretrial Services will verify the status of the home and what type of location monitoring is available in the District of Oregon.
13. He has a very minor criminal history with only one conviction nearly a decade ago and initial failures to appear usually indicating failure of notice, but no other indication of noncompliance thereafter with court orders.

Dated this 5th day of May, 2010.

BY THE COURT



Chief Magistrate Judge David Nuffer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH , CENTRAL DIVISION

RADER, FISHMAN & GRAUER,
PLLC

Plaintiff,

vs.

1-800 CONTACTS, INC.,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:10-CV-191

District Judge Ted Stewart

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel (docket #25). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for **June 16, 2010**, at **11:00 a.m.** is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS	<u>DATE</u>
Nature of claim(s) and any affirmative defenses:	
a. Was Rule 26(f)(1) Conference held?	04/26/10
b. Has Attorney Planning Meeting Form been submitted?	04/29/10
c. Was 26(a)(1) initial disclosure completed?	05/10/10
 2. DISCOVERY LIMITATIONS	 <u>NUMBER</u>
a. Maximum Number of Depositions by Plaintiff(s)	10
b. Maximum Number of Depositions by Defendant(s)	10
c. Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	7
d. Maximum Interrogatories by any Party to any Party	30
e. Maximum requests for admissions by any Party to any Party	30

- | | | |
|----|--|--------------------------|
| f. | Maximum requests for production by any Party to any Party | No
limitation |
| g. | Discovery of electronically stored information shall be handled in accordance with Fed.R.Civ.P. 34. | |
| h. | The parties believe that some form of protective order may be necessary to address any claims of privilege, confidential information and/or protection of trial preparation material asserted after production. As those matters are identified, the parties shall work together in a good faith attempt to create a stipulated form of protective order to submit to the court. | |

DATE

3. AMENDMENT OF PLEADINGS/ADDING PARTIES²

- | | | |
|----|--|-----------------|
| a. | Last Day to File Motion to Amend Pleadings | 08/02/10 |
| b. | Last Day to File Motion to Add Parties | 08/02/10 |

4. RULE 26(a)(2) REPORTS FROM EXPERTS³

- | | | |
|----|--|-----------------|
| a. | Plaintiff and Counterclaimant (on their affirmative claims and defenses) | 12/10/10 |
| b. | Defendant and Counterclaim Defendant (rebuttal reports) | 01/14/11 |

5. OTHER DEADLINES

- | | | |
|----|--|-----------------|
| a. | Discovery to be completed by: | |
| | Fact discovery | 11/15/10 |
| | Expert discovery | 02/14/11 |
| b. | Deadline for filing dispositive or potentially dispositive motions | 03/14/11 |

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

- | | | |
|----|--|-------------------------|
| a. | Referral to Court-Annexed Mediation | <u>Yes/No</u> No |
| b. | Referral to Court-Annexed Arbitration | <u>Yes/No</u> No |
| | The parties believe that any referral of this case to the court's alternative dispute resolution program for mediation should await the conduct of discovery. | |
| c. | Evaluate case for Settlement/ADR on | 05/23/11 |

- d. Settlement probability: **The potential for resolution before trial cannot be estimated prior to the conduct of discovery.**

7. TRIAL AND PREPARATION FOR TRIAL

- a. Rule 26(a)(3) Pretrial Disclosures⁴

Plaintiff **06/24/11**

Defendant **07/08/11**

- b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

DATE

- c. Special Attorney Conference⁵ on or before **07/22/11**

- d. Settlement Conference⁶ on or before 07/22/11

- e. Final Pretrial Conference 2:30 pm 08/08/11

- f. Trial Length Time Date

i. Bench Trial

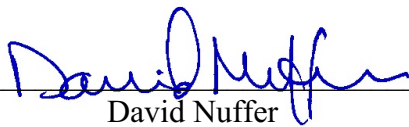
ii. Jury Trial 5 days 8:30 a.m. 08/22/11

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this __4th__ day of ____May____, 2010.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FILED
U.S. DISTRICT COURT

DANA LYDELL SMITH,

Plaintiff,

v.

THIRD JUDICIAL DIST. CT. CLERKS et al.,

Defendants.

DISMISSAL ORDER

Case No. 2:10-CV-253 DS

District Judge David Sam

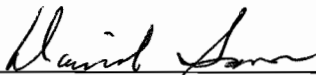
100 MAY -4 PM 2:07

Plaintiff, Dana Lydell Smith, an Idaho inmate, filed a *pro se* prisoner civil rights complaint.¹ Because Plaintiff had at three or more prior times brought an action that was dismissed as "frivolous or malicious or fail[ing] to state a claim upon which relief may be granted,"² the Court concluded that Plaintiff could not proceed *in forma pauperis* without prepaying his entire filing fee. In an order dated March 30, 2010, the Court warned that Plaintiff's complaint would be dismissed unless he paid the full filing fee within thirty days. More than thirty days later, Plaintiff's filing fee remains unpaid.

IT IS THEREFORE ORDERED that Plaintiff's complaint is DISMISSED.

DATED this 4th day of May, 2010.

BY THE COURT:



DAVID SAM
United States District Judge

¹See 42 U.S.C.S. § 1983 (2010).

²28 *id.* § 1915(g).

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

JOSHUA KODY THAYN,,

Plaintiff,

vs.
STONEBRIDGE LIFE INSURANCE
CO.,,

Defendant.

SCHEDULING ORDER

Case No. 2:10-CV-259
District Judge Dale A. Kimball
Magistrate Judge

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel (docket #11). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause..

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | | | |
|-----------|---|----------------------|
| 1. | PRELIMINARY MATTERS | <u>DATE</u> |
| | Nature of claim(s) and any affirmative defenses: | |
| | a. Was Rule 26(f)(1) Conference held? | <u>04/23/10</u> |
| | b. Has Attorney Planning Meeting Form been submitted? | <u>04/23/10</u> |
| | c. Was 26(a)(1) initial disclosure completed? | <u>05/07/10</u> |
| 2. | DISCOVERY LIMITATIONS | <u>NUMBER</u> |
| | a. Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| | b. Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| | c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| | d. Maximum Interrogatories by any Party to any Party | <u>25</u> |
| | e. Maximum requests for admissions by any Party to any Party | <u>25</u> |
| | f. Maximum requests for production by any Party to any Party | <u>25</u> |

	<u>DATE</u>
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²	
a. Last Day to File Motion to Amend Pleadings	<u>09/20/10</u>
b. Last Day to File Motion to Add Parties	09/20/10
4. RULE 26(a)(2) REPORTS FROM EXPERTS³	
a. Plaintiff	<u>10/20/10</u>
b. Defendant	<u>12/17/10</u>
c. Counter Reports	<u>01/31/11</u>
5. OTHER DEADLINES	
a. Discovery to be completed by:	
Fact discovery	<u>09/20/10</u>
Expert discovery	<u>04/01/11</u>
b. <i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	
c. Deadline for filing dispositive or potentially dispositive motions	<u>04/15/11</u>
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a. Referral to Court-Annexed Mediation	
b. Referral to Court-Annexed Arbitration	
c. Evaluate case for Settlement/ADR on	
d. Settlement probability:	
7. TRIAL AND PREPARATION FOR TRIAL:	
a. Rule 26(a)(3) Pretrial Disclosures ⁴	
Plaintiffs	07/29/11
Defendants	08/12/11
b. Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)	

			<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before		08/26/11
d.	Settlement Conference ⁶ on or before		08/26/11
e.	Final Pretrial Conference	2:30 p.m.	09/12/11
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	i. Bench Trial		
	ii. Jury Trial	<u>Three days</u>	<u>8:30 a.m.</u> <u>09/26/11</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 4 day of May, 2010.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR 10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2010\Thayn v. Stonebridge Insurance Co. 210cv259DAK 0504 tb.wpd

FILED
U.S. DISTRICT COURT

2010 MAY -4 P 2:58

DISTRICT OF UTAH
BY: DEPUTY CLERK

Prepared by:

Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Beneficial Tower
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

Mark Lambert (Cal. Bar No. 197410)
Mark Weinstein (Cal Bar No. 193043)
Cooley Godward Kronish, LLP
Five Palo Alto Square
Palo Alto, California 94306-2109
Telephone: (650) 843-5003

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

PUBLIC ENGINES, INC., a Delaware
Corporation,

Plaintiff,

vs.

REPORTSEE, INC., a Delaware
Corporation,

Defendant.

**~~(PROPOSED)~~ ORDER FOR
ENTRY OF DISCOVERY PLAN
AND SCHEDULING ORDER**

Case No. 2:10-cv-317

Honorable Tena Campbell

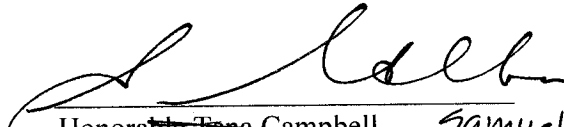
Having reviewed the *Stipulated Motion for Entry of Discovery Plan and Scheduling Order* of Public Engines, Inc. and ReportSee, Inc., and for good cause appearing, the Court hereby enters the following Scheduling Order in this case:

April 30, 2010:	Completion of Discovery
May 14, 2010:	ReportSee's Opposition to Public Engine's Preliminary Injunction Motion
May 24, 2010:	Public Engine's Reply In Support Of Its Preliminary Injunction Motion
June 11, 2010:	Preliminary Injunction Hearing

The Court also grants the parties leave to take the depositions of the named declarants outside of the discovery period.

DATED this 4th day of May, 2010.

BY THE COURT:


~~Honorable Tena Campbell~~ Samuel Albin
United States District Court Judge
my 6-10

Approved as to Form:

/s/Joshua A. Glikin
Joshua A. Glikin
Attorney for ReportSee, Inc.
(Signed with Permission)

FILED
U.S. DISTRICT COURT

2010 MAY -5 A 10:18

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

DISTRICT OF UTAH

CENTRAL DIVISION

BY: _____
DEPUTY CLERK

JONATHAN P. RHODES,

Plaintiff,

vs.

WELLS FARGO HOME MORTGAGE, et al.,

Defendants.

NOTICE OF RECUSAL

Case No. 2:10 CV 393

I recuse myself in this case, and ask that the appropriate assignment card equalization be drawn by the clerk's office.

DATED this 4th day of May, 2010.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
Chief Judge

Case: 2:10cv00393
Assigned To : Stewart, Ted
Assign. Date : 5/5/2010
Description: Rhodes v. Wells Fargo
Home Mortgage et al

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES of AMERICA,

Plaintiff,

v.

MILTON BORJAS,

Defendant.

FINDINGS

Case No.2:10-MJ-108 BCW

Case No. 2:10cr00360-001 DB

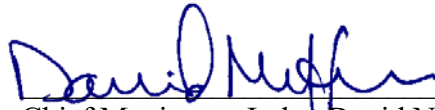
At the hearing held May 4, 2010, the defendant was ordered released based on the following findings. The presumption of detention is overcome by the following facts:

1. The defendant is a long time legal resident of the United States, having lived here since 1989.
2. He has been married 19 years.
3. His children ages 19, 16, 14, and 7 were all born in the United States.
4. He has a legal permanent resident alien card.
5. The defendant's wife traveled to the hearing with documentation to support employment status and income.
6. The defendant owns a home in which he has made substantial investment and due to his personal labor on the home, with his children and wife, has the need to finish the remodeling and re-sale of the home
7. The defendant is engaged in two legitimate and registered businesses, home painting and maintenance and buying, restoring and selling cars. His wife and children assist in this business.
8. The defendant and his family are dependent on his personal labor for support and these means of obtaining income require his continued presence in his residential area.
9. His home is subject to pending foreclosure by being 7 months delinquent but also to pending foreclosure relief that he will lose if he were to flee the country.

10. His ties with Honduras are not significant. The only recent travel to Honduras was when his father died.
11. The defendant was a minor player in the alleged incident. He was not driving the car, had to be given instructions on how to open the compartment with the drugs from the co-defendant and was not in possession of the firearm.
12. By the date of the arraignment (currently scheduled to commence Thursday, May 13, 2010 before Magistrate Judge Samuel Alba), a visit from Oregon Pretrial Services will verify the status of the home and what type of location monitoring is available in the District of Oregon.
13. He has a very minor criminal history with only one conviction nearly a decade ago and initial failures to appear usually indicating failure of notice, but no other indication of noncompliance thereafter with court orders.

Dated this 5th day of May, 2010.

BY THE COURT



Chief Magistrate Judge David Nuffer